TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 162

UNITED STATES OF AMERICA EX REL. ASPASIA POLYMERIS AND ANTIGONE POLYMERIS, PETITIONERS,

vs.

JOSEPH W. TRUDELL, IMMIGRATION INSPECTOR IN CHARGE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 13, 1931

CERTIORARI GRANTED OCTOBER 12, 1931

(35,976)

(35,976)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 10, 1931

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IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA ex Rel. ASPASIA POLYMERIS and ANTIGONE POLYMERIS

vs.

JOSEPH W. TRUDELL, Immigration Inspector in Charge

Record on Appeal

PRELIMINARY STATEMENT

This cause came on for hearing at the Special August Term, 1930, of the United States District Court for the District of Vermont, before the Honorable Harland B. Howe, Judge of said Court, Harry B. Amey, Esq., appeared for the respondent. Harold VanRiper, Esq., of New York City, appeared for the relatrixes. Hearing was begun in said cause on the 18th day of August, 1930, and completed on the 19th day of August, 1930. The order sustaining the writ of habeas corpus, hereby appealed from, was made and filed on August 22, 1930.

There has been no change of parties or attorneys since the commencement of this proceeding.

[fol. 2] IN UNITED STATES DISTRICT COURT

[Title omitted]

WRIT OF HABEAS CORPUS

The President of the United States of America to Joseph W. Trudell, U. S. Immigration Inspector in Charge, St. Albans, Vermont, and or to whomsoever else may have custody and charge of the bodies of the above-named aliens, Greeting:

The bodies of Aspasia Polymeris and Antigone Polymeris, by you illegally detained and imprisoned, it is said,

have you before the District Court of the United States in and for the District of Vermont, at its Courthouse in the City of Montpelier, Vermont, at five o'clock in the afternoon on the 18th day of August, 1930, together with the cause of their detention, to undergo and receive whatsoever this Court may deem fit and proper in the premises, and have you then and there this writ.

Witness Honorable Harland B. Howe, Judge of the District Court of the United States in and for the District of [fol. 3] Vermont, this 14th day of August in the year of our Lord nineteen hundred and thirty and of the Independence of the United States of America the one hundred fifty-fifth.

Henry Conlin, Clerk of the District Court of the United States.

Writ allowed.

Harland B. Howe, United States District Judge.

Endorsed: Returned served August 26, 1930. Arnold A. Murray, Deputy Clerk.

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION—Filed Aug. 14, 1930

To the Honorable Judge of the United States District Court for the District of Vermont:

Aspasia Polymeris and her daughter, Antigone Polymeris, for their petition for a writ of habeas corpus, respectfully show to this Honorable Court:

First. That they were born in Greece and still are citizens of that country although they are residents of the city of New York. That they immigrated to the United States in April, 1909, ex S. S. "Themistocles" and took up their residence in New York with the two sons of relator Aspasia, who are citizens of the United States and the only living kin of relators.

That in September 1913 they left the United States temporarily for a visit to Greece ex S. S. "Athens" and returned in October 1914 ex S. S. "Ioanina."

That from 1909 until 1913 relator Antigone attended public school in New York City, thereafter taking and completing a secretarial course in Wellworth Institute, New [fol. 5] York, and during the period from 1917 to 1923 was employed in clerical capacities by various concerns in New York City.

That in August 1923, having received word that the husband of relator, Aspasia, was ill, relators departed ex S. S. "President Wilson" to visit him, taking with them the usual form of affidavit of intention to return to United States domicile for use upon their return.

That in January 1924, it being apparent that said father's illness would be of long duration, relator Antigone wrote to the American Consul at Athens asking that her stay be extended and they received a reply from him to the effect that upon good cause shown it would be extended, which letter is attached to the record herein.

That some time thereafter, her said father having died, relator Antigone again wrote the Consul early in 1925 and received word from him that they could not return to the United States as residents because they had been absent too long.

That finally relators went to Athens and had a lawyer take the matter up with the American Consul there but he advised them that, because of their long absence, the Consul would not give them returning visas. That thereafter they requested the sons of relator Aspasia to retain a lawyer in the United States to endeavor to secure through the State Department the issuance of the necessary visas at Athens, but that after considerable effort such endeavors were unavailing. Copies of all of said correspondence constitute a part of the record herein.

[fol. 6] That therefore relators lawfully made their way to Montreal and on the morning of August 2nd, 1930 duly presented themselves at the United States Immigration [illegible] at St. Albans, Vermont, and applied for re-admission [illegible]e United States as returning residents under Sections 4 (b) and 13 (b) of the immigration act of May 26, 1924.

That a hearing was had before the Board of Special Inquiry, the Board ruled to exclude them, they appealed to the Secretary of Labor and he has denied their appeal.

There was absolutely no evidence before the Board to support a finding that relators were not aliens previously lawfully admitted to the United States who were returning from a temporary visit abroad, and, therefore, said action on the part of the immigration authorities and of the Secretary of Labor was contrary to law, unfair, arbitrary and totally unsupported by adequate evidence.

Therefore, relators now are unlawfully imprisoned, detained and restrained of their liberty by the respondent at St. Albans, Vermont, within the jurisdiction of this Honorable Court.

Wherefore relators respectfully pray that a writ of habeas corpus issue herein requiring respondent to produce their bodies before this Honorable Court to receive and abide by such order as it may see fit to make in the premises.

Aspasia Polymeris (her X mark). Antigone Polymeris.

Witness to mark: William R. McFeeters.

[fol. 7] *Duly sworn to by Aspasia Polymeris and Antigone Polymeris. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 8] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO WRIT OF HABEAS CORPUS

To the Honorable Judge of the United States District Court for the District of Vermont:

Joseph W. Trudell, being duly sworn; deposes and says that he is and was during all the time herein mentioned an Immigrant Inspector-in-Charge in the service of the United States, stationed at St. Albans, Vermont, and is authorized

to make and does hereby make the following return to the writ of habeas corpus.

The petitioners arrived at this port at 10:00 A. M. August 2, 1930, and were held for a Board of Special Inquiry hearing to determine their admissibility to the United States. The Board of Special Inquiry after a lengthy hearing on that date and a second hearing upon the reopening of the case at 2:00 P. M. August 6, 1930, for further consideration, unanimously arrived at the conclusion that the petitioners were not admissible to the United States as returning residents and voted to exclude both as [fol. 9] persons not in possession of valid quota Consular Immigration visas. An appeal was taken from this decision to the Honorable Secretary of Labor at Washington, D. C., who, in his decision of the 13th instant confirmed the excluding decision.

2. The respondent respectfully submits that said Aspasia Polymeris and Antigone Polymeris were and are legally and lawfully detained by said respondent in accordance with the provisions of Sec. 13 (a) of the Immigration Act approved May 26, 1924, for the reason that they were not in possession of unexpired Greek quota immigration visas. Further that they were not illegally detained after the exclusion by the Board of Special Inquiry, as Sec. 17 of the Act of February 5, 1917, provides that, "and the taking of such appeal shall operate to set any action in regard to the final disposal of any alien whose case is so appealed until the receipt by the Commissioner of Immigration at the port of arrival of such decision which shall be rendered solely upon the evidence produced before the Board of Special Inquiry." The petitioners elected to remain here rather than return to Canada to await the decision of the Secretary of Labor on their appeal.

3. That the petitioners were legally admitted to the United States on April 19, 1909, and November 6, 1914, is not denied as the attached record of their arrival at the port of New York, marked exhibit 1, shows.

4. While it is not denied that the aliens left the United States for Greece in September 1913 and in August 1923, [fol. 10] from the attached copy of telegram received at this office on August 6, 1930, marked exhibit 2, it is noted

that there is no official record of such departures at the port of New York on the date alleged. It is also admitted that the petitioner Antigone Polymeris attended school in New York as well as held various positions. A record taken before the Board of Special Inquiry shows that the petitioners returned to Greece for the purpose of visiting the husband and father who was living at Volo, Greece; that the husband and father was ill and that he died about six months after their arrival in Greece, about the end of January, 1924. Previous to his death, a letter, marked exhibit "B", was received from the American Consul General, Athens, Greece, by the petitioner, Antigone Polymeris at Volo, Greece, in which she was advised that her papers could not be renewed for a stay longer than six months time unless she could furnish very good reasons for a longer delay; that, if she was ill, it would be necessary to send a doctor's certificate. From that date, until March 20, 1929 when the American Consul General at Athens, Greece, wrote to Mr. Harold Van Riper, 1 Broadway, New York City, there is no record at the Consulate at Athens that an attempt was again made after January 10, 1924, to obtain a non quota visa on behalf of the petitioners to permit them to return to the United States. Other exhibits marked "A", "C", "D", "E", "F", "G", "H", "I", "J", and "K", are attached.

5. It is understood that the domicile of the husband is [fol. 11] the domicile of the wife. It appears in the record that the husband intended to join his wife and daughter and other children in the United States from 1909 until the time of his death in 1924. The record is silent to the effect that he, at any time during that period, attempted to enter the United States to join the petitioners. Furthermore, no evidence is presented by the petitioners to show that an attempt was made to dispose of the real property indicated in exhibit "A", by the husband and father from 1909 to the time of his death in January, 1924. On page 29 of the record, taken before the Board of Special Inquiry, the petitioner, Aspasia Polymeris, testified that her husband in 1909 sent her to the United States to see her sons; that she came to see them intending to go back, but, year by year she liked it better and wanted to stay. On the same page the petitioner states that she was not

separated from her husband—that there is no separation between a Greek husband and his wife. The respondent contends that, in the absence of any agreement between the wife and her husband to live apart, or any evidence of abandonment or misconduct, that the domicile of the petitioner and her daughter was with that of the husband and father in Greece, and not in the United States as alleged.

6. The respondent further contends that the petitioners were not entitled to enter the United States in as much as they were not in possession of valid non quota immigration visas nor valid return permits, as provided in para- [fol. 12] graph 2, sub-division "I", Sec. 3 of the Immigration rules of January 1, 1930. An absence of seven years in the country of their origin and the domicile of the husband and father, who was living at the time of their return to Greece, does not constitute a temporary absence; and, in no sense, are the aliens returning from a temporary visit abroad. Transcripts of the Board hearings given on August 2, 1930, and August 6, 1930, are made a part of this return and marked exhibit 3.

The following is quoted from memorandum of the Board of Review when passing upon the appeal of the petitioners:

"By the enactment of the Immigration Law of 1924, Congress has directed that no immigrant shall be permitted to enter the United States unless he has an unexpired immigration visa. However, this requirement, in so far as it affects immigrants returning from a temporary visit abroad, may be dispensed with in accordance and under conditions prescribed by regulations. These regulations are:

'An alien claiming to be a non quota immigrant, on the ground that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad, shall not be admitted as such unless, at time of arrival, he shall establish that he has been previously law- [fol. 13] fully admitted to the United States and is returning from a temporary visit abroad, and presents an unexpired valid immigration visa duly issued by an American consular officer designating the holder as such: Provided, That the presentation of an unexpired valid permit to reenter, duly issued to the holder thereof pursuant to the provisions of section 10 of the immigration act of 1924, shall

be deemed to show prima facie that such holder is returning from a temporary visit abroad, and shall be accepted also in lieu of immigration visa: And further provided, That any alien, who establishes that he has been previously lawfully admitted to the United States and is returning from a temporary visit of not more than six months to Canada, Newfoundland, St. Pierre, Miquelea, Bermuda, Mexico, Cuba, and other islands included in the Bahama and Greater Antilles groups, shall be permitted to enter the United States without a passport, and immigration visa, or permit to re-enter' (Rule 3, subdivision i, par. 2).

Unless, therefore, the aliens can bring themselves within the conditions which have been prescribed by the regula- [fol. 14] tions for dispensing with an immigration visa, their admission is prohibited, not by regulations, but, by the statute itself, because they have no immigration visa. The condition now imposed by the regulations for dispensing with an immigration visa, in such case as this, is the possession of an unexpired permit to return. (See U. S. ex rel. Timpano v. Day, 21 Fed. (2d) 852, D. C., S. D. of New York; Of Patti v. Curran, 22 Fed. (2) 314, Johnson v. Keating, 15 Fed. (2) 50, and Serpico v. Trudell, decided by the U. S. District Court for the District of Vermont on November 8, 1928, relating to the same question prior to the amendment of the rule quoted). The aliens have no immigration visas nor permits and are therefore, prohibited from entry.'

It is also found that the aliens are not non quota immigrants as defined by the Act of 1924. Retention of domicile with its intention to return is insufficient to establish such status. The requirement is that the aliens must be returning from a temporary visit abroad. To hold that a seven years' absence in the country of nativity of the aliens is a temporary absence is to give to the phrase the meaning which it does not possess and which the United States Circuit Court for the Second Circuit has very definitely ruled must be defined as a short absence, its termination limited [fol. 15] and fixed by some event. To illustrate, in the case of U. S. ex rel. Lasto v. Day, 21 Fed. (2) 307, dealing with a family applying for admission as returning residents, the father being in possession of a re-entry permit, and the wife and children in possession of non quota immigration visas, after an absence in the country of their nativity of five years, Judge Swan speaking for the Court said:

'The wife and daughter had been away almost five years. The husband had been away more than two years before he came back as a temporary visitor, and more than four years before he applied for permanent re-admission. During all this period, he had no business nor place of habitation in this country. The word, "temporary," in the phrase "returning from a temporary visit abroad" means more than the mere intention of domicile, that is, an intention to keep the United States as a home to which one will ultimately return. This follows from Section 10 of the Immigration Act of 1924, prescribing the issuance of permits for temporary absence. The applicant must state the length of his intended absence and the reasons therefor. The permit shall not be valid for more than one year, though there is a provision for extension from time to time for a period of [fol. 16] six months for good cause shown. While, at the present time, there is no immigration rule defining a temporary visit abroad, the suggested construction is corroborated by the practice of the Department under former Acts in adopting a rule limiting a temporary visit to an absence of six months' duration. Such a rule was sustained as reasonable. See United States ex rel. Randazzo v. Tod. 297 Fed. 214 (C. C. A.-2); United States ex rel. Devenuto v. Curran, 299 Fed. 206 (C. C. A.-2). We cannot agree, therefore with the opinion of the learned judge from whose order this appeal is taken, that retention of domicile is alone sufficient to establish that the relators are non-quota immigrants. Without attempting to complete definition of a "temporary visit," we may say, that we think the intention of the departing immigrant must be to return within a period relatively short, fixed by some early event.'

Again, in the case of Soas U. S. ex rel. Thomas v. Day, 29 Fed. (2) 485, a case which came before the United States Circuit Court of Appeals for the 2nd Circuit, the same question was involved. The aliens in that case, a man and his wife originally came to the United States in 1924 to join their children. After a short stay in this country, they went back to their home in Jamaica where they were [fol. 17] real property owners. They returned to the United States to their daughter's wedding in June 1926, on a temporary visit, as non immigrants, but went back

to Jamaica to sell their real estate and with the intention of returning to the United States for the purpose of taking up their permanent residence in this country with their children. While they bought bedroom furniture and used — for their own purposes, they left it with the daughter when they returned to Jamaica. They did not succeed in selling their real property in Jamaica, and returned to the United States in October, 1928, and claimed admission at that time as non quota immigrants on the basis that they were previously lawfully admitted, and were returning from a temporary visit abroad. Judge Manton who wrote the opinion affirming the dismissal of the writ sued out in behalf of the aliens, said:

'With the burden resting on the appellants by virtue of Sec. 23 of the Immigration Act of 1924, they have failed to establish that they are entitled to admission as returning from a temporary visit abroad. They were absent, since 1924, one year and three months before they came in June, 1926, and again one year and five months after leaving in 1927, and before they arrived in October 11, 1928. This was beyond the six months' period of absence referred to by the departmental rule: U. S. ex rel. De Venute [fol. 18] v. Curran, 299 Fed. 206; Mackusick ex rel. Pattavina v. Johnson, 3 Fed. (2) 389; U. S. rel. Lesto v. Day, 21 Fed. (2) 307. Under these facts, the appellants have not established a domicile within the United States for they had no true fixed and permanent home or principal establishment to which they had an intention of returning whenever absent. No person is without a domicile and he can have but one at a time. U. S. ex rel. De Venuto v. Curran, supra. The record justified the Board of Inquiry and sustains the District Court in its finding against the appellants.' ''

Wherefore, respondent prays that the writ of habeas corpus herein be dismissed and that the petitioners be remanded into the custody of the respondent or to any other officer of the United States Immigration Service at St. Albans, Vermont, to be dealt with according to law.

Joseph W. Trudell.

Subscribed and sworn to before me this 10th day of August, 1930. Ruth M. Hodges, Notary Public.

[fol. 19] TELEGRAM RE ARRIVAL

Western Union

Received at 76 North Main St., St. Albans, Vt.
B 119 44 Govt. CD New York, NY. 6 610 P.

1930 Aug. 6 PM. 655.

Immigration Service, St. Albans, Vt.:

Aspasia Polymerou forty two and daughter Antigony age eight citizens Greece both arrived steamer Themistocles April nineteen nine Stop Aspasia Polimera forty nine and daughter Antigoni fourteen citizens Greece admitted steamer Ioannina November six nineteen fourteen no record departure prior March nineteen twenty nine.

Uhl.

I certify that the above is a true copy of the original.
Abbie L. M. Ford, Immigration Clerk.

Sworn to before me this 15th day of August, 1930.
Ruth M. Hodges, Notary Public.

[fol. 20] CERTIFICATE OF ADMISSION OF ALIEN

U. S. Department of Labor, Immigration Service

99117/565.
(Per Teleg. Request.)

Port of New York

Date: Aug. 6, 1930.

Immigrant Inspector in Charge, St. Albans, Vermont:

I hereby certify that the following is a correct record and statement of facts relative to the admission to the United States of the alien named below:

(1) Manifest No. 1/16; Class, 2nd; from Piraeus.
(2) S. S., Ioannina; Line, Greek.
(3) Port at which admitted, N. Y. C.; Date, 11/6/14.
(4) Name, Polimerou, Aspasia; Age, 49; Sex, f.

(5) Married, M.; Occupation, H'keeper; Able to read, no; write, no.

(6) Citizen of, Greece; Race, Greek.

(7) Place of birth, Makrinitza, Gr.

(8) Class of immigration: visa, —; no., —; Issued at, ——; Date, ——.

(9) Last permanent residence, N. Y. C.

(10) Name and complete address of nearest relative or friend in country whence alien came, Husb. Margaritin Makrintsa, Gr.

(11) Destination, N. Y. C.; By whom Money passage paid, self; brought, $25.

(12) Whether in U. S. before, yes; When, 1908/1913; Where, N. Y.

(13) Whether going to relative or friend; Give name and [fol. 21] complete address; Son: Const. Polymerou, 70 W. 37th Str., N. Y. C.

(14) Purpose of coming to U. S., ——.

(15) Condition of health, Good.

(16) Height, 5'7"; Complexion, wh.; Color of hair, gr.

(17) Color of eyes, br.; Identification marks, none.

(18) Examined by Inspector Watson.

(19) Accompanied by Dau. Antigoni—14 yrs.; How admitted, primary.

(20) Remarks:

(Signature:) Byron H. Uhl, (Official title:) Assistant Commissioner.

Copy.

Endorsed: Filed August 19, 1930. Arnold A. Murray, Deputy Clerk.

[fol. 22] CERTIFICATE OF ADMISSION OF ALIEN

U. S. Department of Labor, Immigration Service

99187/565.

Port of New York

Date: August 6, 1930.

Immigrant Inspector in Charge, St. Albans, Vt.:

I hereby certify that the following is a correct record and statement of facts relative to the admission to the United States of the alien

(1) Manifest No., 9-23; Class, 3d; from Piraeus.
(2) S. S., Themistocles; Line, Greek.
(3) Port at which admitted, New York; Date, 4-19-1909.
(4) Name, Polymerou, Aspasia; Age, 42; Sex, f.
(5) Married, m.; Occupation, H'hold; Able to read, no; write, no.
(6) Citizen of, Greece; Race, Greek.
(7) Place of birth, Macryistra, Voles.
(8) Class of immigration: Visa, —; no., —; Issued at, ——; Date, ——.
(9) Last permanent residence, Macrynitsa.
(10) Name and complete address of nearest relative or friend in country whence alien came, husb., Margaritis Polymerou, Volo.
(11) Destination, New York; By whom Money passage paid, self; brought, $42.
(12) Whether in U. S. before, no; When, ——; Where, ——.
(13) Whether going to relative or friend; Give name and [fol. 23] complete address; Son, Const. Polymerou, 130 West St., New York City.
(14) Purpose of coming to U. S., ——.
(15) Condition of health, Good.
(16) Height, 5′7″; Complexion, wh.; Color of hair, wh.
(17) Color of eyes, dk.; Identification marks, none.
(18) Examined by Inspector Tuttle.
(19) Accompanied by daughter, Antigony B.; How admitted, special inquiry; admitted 4/21-103/E.
(20) Remarks:
(Signature:) Byron H. Uhl, (Official Title:) Assistant Commissioner.

Copy.

[fol. 24] TESTIMONY

Form 611

U. S. Department of Labor, Immigration Service

908/713.
B. S. I. No. A-65 and 117 of A-65.
Manifest No., —.

In the Matter of Antigone Polymeris and mother, Aspasia Polymeris.

(Date:) August 2, 1930.

At a meeting of a Board of Special Inquiry held at St. Albans, Vt., at 10:35 A. M. and 1:30 P. M.

Present: Inspectors Andrew J. Mawn, Chairman, and Eugene J. Lincourt; Ruth M. Hodges, Secretary.

Interpreter: Rev. John B. Kaloria.

Arrived via: C. V. No. 332. Date: 8-2-30.

Held by Insp. Cole. Cause: Susp. CIV.

Statistical Data: Antigone Polymeris. Speaks English. 26; Duly sworn; f.; s; none; Greece-Greek; reads English and Greek; Athens, Greece; none; going to mother Aspasia, 542 W. 146th St., New York, N. Y.; passage, mother; $ (?); in U. S. 1909 to 1923 at New York.

Destination: New York, N. Y.

Obj. Migr.: Resume residence.

Med. Cert.: F. F. D.

Description: 5′ 1″; med. bro.; bro.; born Volo, Greece.

Rejected CIV.

Statistical Data: Aspasia Polymeris, Speaks Greek. 60; Duly sworn; f.; w.; none; Greece-Greek; cannot read [fol. 25] in any language; Athens, Greece; none; to son Gus, 542 West 146th St., New York City; passage, self; $800.00; in U. S. 1909 to 1923 at New York City.

Destination: New York City.

Obj. Migr: Resume Residence.

Med. Cert.: F. F. D.

Description: 5′ 2″; med.; bro.; grey; born Volo, Greece.

Illiterate—CIV

Antigone Polymeris questioned by Chairman at 10:35 A. M.

Q. While this hearing is private, you can have a friend present if you want to.

A. I haven't anybody.

Q. Were you ever refused admission to the U. S.?

A. No, that is when I went to Greece.

Q. I mean coming back, were you ever refused admission to the U. S.?

A. No.
Q. Have you always been in good health?
A. Yes, in good health.
Q. Have you ever been the inmate of an institution of any kind?
A. No, never been.
Q. Have you ever been arrested?
A. No.
Q. Were you ever deported from the U. S.?
A. No.
Q. Can you read and write?
A. Yes. (Reads English Class 5, No. 5114, Armenian-
[fol. 26] Turkish.)
Q. Are you traveling alone?
A. With my mother.
Q. What is your mother's name?
A. Aspasia Polymeris.
Q. Did you ever live in the U. S.?
A. Yes.
Q. When did you first land in the U. S.?
A. In 1909.
Q. Where did you land?
A. In New York City.
Q. Do you know the exact date and on what boat?
A. The S. S. "Themistocles," around April.
Q. How long did you live in the U. S. at that time?
A. From 1909 to 1923, with the exception of one year's trip in 1913.
Q. You mean you went back to Greece for about a year in 1913?
A. Yes, I left September 1913 on the S. S. "Athenia."
Q. When did you return?
A. In October 1914.
Q. On what boat?
A. S. S. "Ionina."
Q. Where did you land?
A. In New York City.
Q. How long did you live in the U. S. after October 1914?
A. Until 1923.
Q. What date did you leave the U. S. in 1923?
A. August 23, 1923.
[fol. 27] Q. Did your father reside in the U. S. during the same period?

A. He never did.

Q. Of what country are you a citizen or subject?

A. Greece.

Q. Did you ever take any steps to become an American citizen?

A. I never did.

Q. Where have you been since August 23, 1923?

A. I have been in Greece.

Q. Between August 1923 and today, have you ever applied for admission to the United States, either at an American Consulate or at U. S. Immigration office?

A. Yes, I have tried many times at an American Consulate.

Q. Where?

A. In Greece—in Athens.

Q. When did you first go to the American Consulate at Athens and apply for papers on which to return to the U. S.?

A. I didn't go personally to the American Consulate but I wrote him a letter in 1924.

Q. What month?

A. January.

Q. What did you say in that letter?

A. I asked him if I could renew my papers—I had papers made in New York when I came to Greece, and I asked him if I could renew them and he wrote me back and said if I gave full explanation what was the reason, I could stay for [fol. 28] another six months' time.

Q. What kind of papers did you get before you left New York to go to Greece?

A. An affidavit, I don't know what they call it; I have it with me if you want to see it.

(Presents affidavit dated at New York, N. Y. August 15, 1923, setting forth that Aspasia and Antigone Polymeris have resided in the United States since 1916; that their present address is 46 West 66th St., New York City and that they are temporarily leaving the United States from the port of New York on the S. S. "President Wilson", sailing August 23, 1923, for the purpose of visiting relatives temporarily, and that they intend to return to the United States within six months. Also sets forth that their son and brother, respectively, Constantine Polymeris, an

American citizen, lives at 46 West 66th St., and is engaged in the restaurant business at 242 West 145th St., New York City. Also shows that they have not declared intentions of becoming citizens of the United States. Subscribed and sworn to before Nicholas J. Cassavotes, notary public.)

Q. Why didn't you return to the U. S. within six months?

A. I couldn't because father was sick and he died in February 1924 and I couldn't settle up the property, you see.

Q. When did you get the property settled up?

A. I really put the property in the hands of an agent now.

[fol. 29] Q. Then it is not as yet settled up?

A. No, because we cannot get the money that we should get.

Q. What is there about this property that makes it so difficult of settlement?

A. Well, you see my father had some business, tannery business, and that is worth a lot of money, and a lot of other properties in different places. You see you cannot get the money that it is worth, that's why.

Q. When you received the letter from the American Consulate telling you that for a good reason you might get an extension of time, what did you do next as to getting the extension?

A. Next I did write to him explaining the situation.

Q. When?

A. After my father died of course—I can't remember the month—in 1924, it was, explaining how the circumstances were, that I had to stay with the property, etc., and he wrote back an answer that I would have to come in person to Athens—to him personally—and arrange it later on.

Q. Did you reply to that letter?

A. No, I didn't.

Q. When did you go to Athens to arrange it?

A. In 1925 I wrote him another letter asking him if I could get a non-quota permit, and he refused me.

Q. Did he tell you why?

A. Well I don't remember, but I think it was because I stayed too long, you see.

Q. Since you were refused by the American Consul in [fol. 30] 1925, have you made any further effort to get papers on which to return to the U. S.?

A. Yes, I did when we moved to Athens in 1926 and I put the matter in some lawyer's hands, J. Tsatsonis, to take care of my case, but he couldn't succeed so he told me to put the matter to my brothers and take care of it in the United States.

Q. Have you personally ever applied at the American Consulate for papers?

A. Not until lately, but my brothers got in touch with Mr. Van Riper and he prepared me some papers and I went to the Consulate personally with my mother.

Q. When did you go to the American Consulate?

A. That was around January 1929.

Q. Where?

A. In Athens.

Q. What did the Consul tell you?

A. He refused me.

Q. Why?

A. He couldn't grant me a non-quota permit.

Q. Did he say why he couldn't?

A. Because I stayed too long.

Q. When did you leave Greece the last time?

A. The time I went to America?

Q. No, the last time.

A. July, this year, 1930.

Q. Where did you sail to?

A. To Marseilles, France.

Q. From Marseilles, where did you go?

A. Paris.

[fol. 31] Q. Then where did you go?

A. Cherbourg, France.

Q. Then where?

A. On the S. S. "Alaunia" to Montreal.

Q. To where were you destined when you left Greece—where was your final destination?

A. Well to Canada and then if I could go to Victoria, etc.

Q. You mean Victoria, B. C.?

A. Yes.

Q. Did you go to Victoria, B. C.?

A. No.

Q. Why not?

A. Well, really my intention is to return home to the U. S.

Q. Do you mean that you consider the United States your home?

A. I always did.

Q. Do you now?

A. I do.

Q. How old were you when you landed first in the U. S.?

A. I was six years old.

Q. Did you go to school there?

A. Yes, I had my education in New York.

Q. What school did you attend?

A. "P" 165, between 8th and 9th Ave., 48th St., New York City.

Q. Any other school?

A. Well I went to business school—Wolworth Institute, 72nd St., and Broadway.

Q. Were you admitted to Canada for permanent residence?

[fol. 32] A. No, they admitted me for three weeks—it is on the passport, (Alien presents Greek passport No. 325, issued at Athens, Greece, the 13th day of January, 1930; passport valid for one year; passport valid for Europe and Japan. Japanese visa given at Athens, January 14, 1930; French visa given at Athens January 15, 1930, and British visa for U. K. and Canada, good for journey for the purpose of traveling. Given on January 15, 1930 at Athens. Does not bear U. S. Consular visa. Notation on passport indicates alien admitted for three weeks as nonimmigrant at Quebec, July 27, 1930).

Q. Where did you land in Canada?

A. At Quebec or Montreal—Montreal.

Q. Where were you examined by the Canadian Immigration officers?

A. Quebec.

Q. In what class did you travel?

A. Tourist.

Q. Why did you get a Japanese visa?

A. Because it is hard to get to Canada.

Q. Why did you not sail direct to an American port, New York or Boston?

A. Why the Consulate doesn't permit me right through to New York.

Q. Did you attempt to buy a steamship ticket direct to the U. S.?

A. No.

Q. Who suggested that you travel by this route?

A. My brother.

Q. Which brother?

[fol. 33] A. My brother Constantine.

Q. Who is at the office with you this morning here?

A. Mr. Van Riper.

Q. And your mother?

A. Yes.

Q. Is Mr. Van Riper a lawyer?

A. Yes.

Q. Is he interested in your case?

A. Yes.

Q. Did he suggest to your brother that you come by this route?

A. I presume he did because he has taken my case.

Q. Did your mother live in the U. S. during the same periods that you lived there?

A. Yes, the same period.

Q. How does it happen that this affidavit shows you have resided in the U. S. since 1916?

A. Well, I guess it was give—the later date—we arrived there. I don't quite remember why it was given in 1909.

Q. You stated that you first landed in the U. S. in 1909?

A. Yes.

Q. You also stated that the second time you landed was in October 1914?

A. Yes.

Q. Did you go abroad after that and land again in 1916?

A. No sir, just one trip I made.

Q. You mean one trip outside of this last one?

A. Yes, just one trip between all those years.

[fol. 34] Q. Then you cannot explain how that happens to say 1916?

A. I cannot explain—I guess the wrong year was given—that is all.

Q. Have you any money or property in the U. S.?

A. Well I have my savings accounts which are all there; I have put all my money—my bank accounts in New York.

Q. Have you your bank book here?
A. Yes.
Q. Let's see it please.

(Presents book No. 681522, Ledger 136, on the Union Dime Savings Bank, 6th Avenue and 40th St., New York City, in the name of Antigone Polymeris, showing transaction from February 1, 1915. Shows transactions from August 7, 1915 and through succeeding years, at different intervals, until June 18, 1917. The next transaction is on November 3, 1919, when interest was added. The next deposit was on May 3, 1920 and succeeding transactions continue at varying intervals, up to August 21, 1923. In July 1927 the interest was added, indicating a balance of $586.23 on that date.)

Q. This book is in the name of Anna Polymeris—who is that?
A. Me.
Q. Have you any money in the Union Dime Savings Bank at the present time?
A. That is the balance that I have.
[fol. 35] Q. Is that balance in the bank now in your name?
A. Yes.
Q. And have you had an account at the Union Dime Savings Bank continuously since February 1, 1915?
A. Yes, that is, I have kept sending my savings to the Bowery since I have been in Greece. I haven't been sending any by mail to the Union Dime; I have kept the account but not increased it.
Q. But before or after you left the U. S. you never wiped out your account at the Union Dime Savings Bank in New York City?
A. No.
Q. Who is Antigone?
A. I am.

(Presents book No. 2175 on the Bowery Savings Bank, 110 East 42nd St., New York City, showing a deposit of $5,100.00 on February 4, 1924 and different transactions within succeeding years, up to November 21, 1928, on which date the balance was indicated at $1,707.54.)

Q. Have you any money in the Bowery Bank at the present time?
A. Yes.

Q. How much?

A. $1,700.00 and something—I don't know the balance.

Q. Where did you get this $5,100.00 with which you opened this account?

A. That was given to me as a present by my brothers, [fol. 36] Constantinos and Pollimeros.

Q. Who made the succeeding deposits in the years 1924-1925-1926 and 1927?

A. I did.

Q. How did you make them?

A. I worked.

Q. But you were in Greece?

A. In what years did you say?

Q. 1924-1925-1926 and 1927.

A. I made deposits through mail.

Q. How does it happen that during the periods that you were making these deposits you were also making heavy drafts on the account?

A. I needed the money so I had to.

Q. Isn't the real truth of the matter, that your brothers continued to furnish the money for the deposits and you drew drafts to support yourself and your mother while in Greece?

A. Yes.

Q. Were these accounts kept in force with the object of lending strength to your claim to the United States as your home?

A. Yes.

Q. Was any of the money deposited in your name really your own money?

A. Part of it.

Q. Was any of the money deposited in the Bowery Savings Bank your money?

A. Yes.

Q. How much, approximately?

A. About $1,000.00.

Q. How much of the money deposited in the Union Dime Savings Bank was your own money?

[fol. 37] A. That is all mine.

Q. Are you applying here this morning for permanent admission to the U. S.?

A. Yes.

Q. Are you in possession of an unexpired Immigation visa?

A. No sir.

Q. Are you in possession of a return permit?

A. The only thing I have is my passport with me here—what do you mean—you mean to Greece?

Q. No, the U. S.?

A. No, I have no permit to the U. S.; the only thing I had was what expired long long ago. (Points to affidavit.)

Q. Have you always been in good health?

A. Yes.

Q. When did your father die?

A. In 1924.

Q. What month?

A. February.

Q. Is your mother in good health?

A. Very good.

Q. Has she always enjoyed good health?

A. Yes.

Q. What was your real reason for obtaining a Japanese visa?

A. As you know, we cannot get to Canada.

Q. In what way did you think a Japanese visa would be of any assistance to you?

A. Well it's hard to get to Canada, so I asked to get a transit visa, you see.

Q. Did you go to Japan?

[fol. 38] A. No.

Q. Did you intend to go to Japan?

A. My real intention was to return to my home in America.

Q. Have you registered at any U. S. Consulate for a quota immigration visa to come to reside in the U. S.?

A. I asked for a non-quota permit, not a quota; a quota visa takes years to get.

Q. Have you registered at any U. S. Consulate for a quota immigration visa to come to reside in the U. S.?

A. I asked for a visa but they say many years will pass to get a quota visa.

Q. But is your name on the quota visa waiting list anywhere?

A. I don't think so.

Q. Do you own any property in the U. S.?

A. My brothers do, not me.

Q. Did your mother ever become an American citizen?

A. No.

Q. Was there any reason for not settling up the estate other than the fact that you couldn't get a good price for the property?

A. No other reason.

Q. Was that the sole reason for your remaining in Greece so long?

A. That is all the reason.

Q. You were perfectly able and physically fit to return?

A. Physically fit to return.

Q. Both you and your mother?

[fol. 39] A. Both me and my mother.

Q. But you didn't return on account of the property being unsettled?

A. Yes on account of the property being unsettled.

(Alien presents letters, etc., which are used as exhibits and made a part of this hearing.)

Q. Did you or your mother ever seek an extension of time on account of illness?

A. Never.

Q. Did you ever furnish the American Consul with a detailed explanation of the personal business which detained you?

A. Yes.

Q. When did you furnish that?

A. It was later—after my father died; maybe two months—I don't remember the date.

Q. Why didn't you go to see the Consul when he told you to come, instead of writing?

A. It was very far.

Q. How many miles?

A. Volo to Athens—I don't know the miles; I can tell how long it takes to go. You leave at night and you get there the next night at six.

Hearing adjourned at 12:15 P. M.

Hearing reopened at 1:30 p. m.

Same Board.

Q. Did you understand all of the questions I asked you this morning?

A. Yes.

Q. Are there any other statements you want to make [fol. 40] here today?

A. Nothing else.

Same Board present, 1:30 p. m.

ASPASIA POLYMERIS questioned through Interpreter Rev. John B. Kaloria in Greek, by Chairman. Interpreter duly sworn.

Q. You have the right to have a relative or friend present at this hearing.

A. Whom?

Q. Do you want your daughter present at this hearing?

A. Well I don't care. (Daughter allowed to be present.)

Q. Were you ever refused admission to the U. S.?

A. Never.

Q. Were you ever seriously ill?

A. No.

Q. Were you ever an inmate of an institution of any kind?

A. No.

Q. Were you ever deported from the U. S.?

A. No.

Q. Can you read or write?

A. No. (Alien presented with Class 5, serial No. 5114, Greek. "His substance also was seven thousand sheep, and three thousand camels, and five hundred yoke of oxen, and five hundred she asses, and a very great household; so that this man was the greatest of all the men of the east." Alien would not attempt to read it.

Q. Could you ever read?

[fol. 41] A. Never.

Q. Of what country are you a citizen? or subject?

A. Greece.

Q. Of what country was your husband a citizen or subject?

A. Greece.

Q. Did your husband ever live in the U. S.?

A. No sir.

Q. Did you ever live in the U. S.?

A. Yes.

Q. When and where did you first land in the U. S.?

A. I arrived in New York in 1909.

Q. Did you come on the same boat as your daughter Antigone?

A. Yes.

NOTE.—Daughter claims to have landed on the S. S. "Themistocles" in April 1909.

Q. How long did you reside in the U. S. after your first landing?

A. 14 years.

Q. Didn't you return to Greece with your daughter Antigone in the year 1913?

A. Yes, I was there one year.

Q. Did you return to the U. S. with your daughter Antigone in October 1914?

A. Yes.

Q. Where did you live from 1909 until you left the U. S. in 1913?

A. In New York.

Q. What address?

A. On Columbus Ave., 981.

[fol. 42] Q. Did you live there all of the time between 1909 and 1913?

A. No, I lived at 245 West 45th St.

Q. Did you live at any other address between 1909 and 1913 in the U. S.?

A. Yes, at 781 Third Avenue.

Q. Did you live at any other place between 1909 and 1913 in the U. S.?

A. No.

Q. When did you leave the U. S. in 1913?

A. September 1913.

Q. Were you accompanied by your daughter, Antigone when you left?

A. Yes.

Q. Why did you go to Greece in 1913?

A. On a visit.

Q. How long a visit did you make?

A. One year.

Q. When did you next return to the U. S.?
A. In September.
Q. What year?
A. September 1914—I don't remember the *name*.
Q. Did your daughter Antigone return to the U. S. with you in 1914?
A. Yes.

NOTE.—Antigone Polymeris testified that she landed at New York in October 1914 on the S. S. "Ioaninia."

Q. Were you legally admitted to the U. S. at New York in 1914 for permanent residence?
A. Yes.
Q. While you lived in the U. S. did you at any time, take [fol. 43] steps to become a citizen of that country?
A. No.
Q. When did you next leave the U. S. after your landing in 1914?
A. I don't remember the year but it was on the S. S. "President Wilson."
Q. Did your daughter Antigone accompany you from the U. S. on the "President Wilson"?
A. Yes.
Q. About how many years ago was it that you left the U. S. on the "President Wilson?"
A. Seven years.

NOTE.—The daughter Antigone testified that she sailed from the U. S. on the S. S. "President Wilson" August 23, 1923 for Greece.

Q. Where did you go in 1923, after leaving the U. S.?
A. To Greece.
Q. Why did you go to Greece in 1923?
A. I went over to see my husband who was ill.
Q. When you left the U. S. in 1923 how long a visit did you contemplate making?
A. I didn't intend to stay.
Q. How many weeks or months did you expect to visit in Greece when you left here in 1923?
A. I didn't know.
Q. Have you been absent from the U. S. all the time since you left in 1923?
A. Yes.

Q. Why didn't you return after making a six months' visit in Greece?

A. I couldn't because I had property there.

[fol. 44] Q. You knew you had this property there before you left New York, didn't you?

A. Yes.

Q. What was there about the property that made it impossible for you to return within six months?

A. I couldn't get the money I wanted for the property.

Q. Is your husband living now?

A. He is dead.

Q. When did he die?

A. 1924.

Q. Then do you mean that following your husband's death, you were trying to settle up the estate and that was what kept you in Greece?

A. Yes, sir.

Q. Of what did the estate consist?

A. One house—one store and other property and land property.

Q. Is it a farm?

A. Yes.

Q. Have you settled the estate?

A. No, but put in the hands of an agent to settle.

Q. Are you in possession of any papers entitling you to enter the U. S.?

A. No sir.

Q. Are you applying today for permanent residence in the U. S.?

A. Yes, we came here to get the permit to get to our homes to reside here.

Q. Have you ever applied at an American Consulate or an American Immigration office anywhere for papers on [fol. 45] which to enter the U. S. since 1923?

A. In Athens.

Q. When did you apply at the American Consulate in Athens?

A. 1929.

Q. Previous to your application at the American Consulate in Athens last year, did you ever apply in person or by mail, to an American Consulate, for papers on which to return to the U. S.?

A. Yes.

Q. By mail or in person?
A. I wrote.
Q. To whom did you write and when?
A. I didn't do it, my daughter did it—I don't know how to write.
Q. Did the American Consul at Athens refuse to issue a non-quota Immigration visa to you?
A. He did.
Q. On what grounds did he base the refusal?
A. Because we were delayed.
Q. Do you mean because you remained too long in Greece?
A Because I stayed too long.
Q. Have you any children in the U. S.?
A. Yes, two sons and one daughter.
Q. What are the names of your children?
A. Constantinos and Polimerios and Antigone.
Q. Are any of your children United States citizens?
A. Polymerios.
Q. Did you ever apply at an American Consulate anywhere for a quota immigration visa?
[fol. 46] A. No.
Q. Is your name now on the waiting list of any American Consulate for an Immigration visa of any kind?
A. No.
Q. Who did you intend to make your home with in the U. S. if admitted?
A. With both sons.
Q. How much money have you?
A. My daughter takes care of that.
Q. Have you any money or property in the U. S.?
A. No sir. I have none.
Q. About how much is your property in Greece worth?
A. I don't know.
Q. Are your children in the U. S. well-to-do?
A. Yes, sir, they are rich.
Q. In what business are they?
A. Restaurants.
Q. Are they ready and willing to receive and support you?
A. Yes.

NOTE.—Alien presents Greek passport No. 324, issued at Athens January 13, 1930, valid for one year for Europe

and Japan. Bears Japanese, French and British visas. Not valid for the U. S. and not visaed by an American Consulate officer. Passport is indorsed to show that applicant was admitted at Quebec, P. Q., July 27, 1930 for three weeks as a non-immigrant.

Q. Did you land in Canada a few days ago with your daughter?

[fol. 47] A. Yes.

Q. Did you go to any American Immigration or Consular officer in Canada and apply for admission to the U. S.?

A. No sir.

Q. When you left Greece this last time what was your final destination?

A. America.

Q. Then why didn't you take a steamer direct to New York from Greece?

A. Because I didn't have a visa.

Q. For how long a time were you admitted to Canada?

A. I don't know.

Q. Did you intend to go to Japan?

A. No.

Q. Then why did you get a Japanese visa?

A. To make it easy to get to Canada?

Q. Have you anything in the way of documents to prove that you have lived in the U. S. the time you claim to have?

A. I have none.

Q. Who is this man who accompanies you here at the office today?

A. I don't know.

NOTE.—(Accompanied to office by Attorney Harold Van Riper of New York City.)

Daugher of alien presents U. S. Naturalization certificate No. 605,881, issued to Gus Polymeris at New York March 15, 1915, also U. S. Naturalization certificate No. 3125967 issued to Polimeros Polimeris, dated at New York July 18, 1929.

[fol. 48] Q. Have you understood all the questions that you have been asked?

A. Yes.

Q. Is there any other statement you want to make in connection with your application for admission to the U. S.?

A. No sir.
Q. Have you always been in good health?
A. Yes.
Q. Where you sick at all while abroad on this last trip to Greece?
A. No sir.

Inspector Lincourt: I move the rejection of the aliens Antigone Polymeris and Aspasia Polymeris as persons not in possession of valid quota Consular Immigration visas.
Secretary Hodges: I second the motion.
Chairman Mawn: I make it unanimous.
To Aliens: You have been rejected by the Board of Special Inquiry Antigone Polymeris and Aspasia Polymeris as persons not in possession of valid quota Consular Immigration visas. From this decision you have the right of appeal to the Secretary of Labor at Washintgon, D. C., to whom, in the event of your filing such appeal this entire record will be forwarded for review.

Q. Do you wish to appeal?
A. Yes, we do.
Q. Do you wish an answer by telegraph or by mail?
A. By mail.
Q. What will be your address?
[fol. 49] A. U. S. Immigration Detention Quarters, St. Albans, Vermont.
Q. Do you understand that if you stay here you will be locked up?
A. Yes.
Q. Do you also understand that you can, if you wish, return to Canada and there be advised of the decision from Washington?
A. Yes, I understand.
You are hereby warned that entry to the United States except in conformity with the immigration laws and regulations will render you liable to arrest and deportation. Entry by evading inspection or by making false and misleading statements to immigration officers will render you liable to fine or imprisonment or both, followed by deportation. It will be unlawful for you to make another application for admission for one year from this date, unless

you first obtain permission from the Secretary of Labor to do so."

NOTE.—Several exhibits in triplicate are inclosed and made a part of this appeal.

(Signed) J. W. Trudell, Inspector in Charge. (Signed) A. J. Mawn, Chairman, Immigrant Inspector. (Signed) Ruth M. Hodges, Secretary, Immigration Clerk.

[fol. 50] Hearing in the case of Antigone Polymeris reopened on August 6, 1930 at 2:00 P. M., with the following Board present:

Inspector in Charge, J. W. Trudell, Chairman; Ruth M. Hodges, Stenographer-Secretary, and Inspector C. D. Phelps.

Ted Costes, Interpreter.

Alien, duly sworn and questioned by Chairman, speaks English.

Q. You are advised that this case is reopened for the purpose of obtaining additional information. How old were you when you came to the U. S. the first time.

A. Six years old.

Q. At what age did you begin attending school?

A. About 1912.

Q. How old were you then?

A. I was nine years old.

Q. What was the name of the first school you attended in the U. S.?

A. P. 165, 48th St., between Eighth and Ninth Avenue, New York City.

Q. To what age did you attend that school?

A. About two years.

Q. How old were you when you stopped going to that school?

A. Eleven years old.

Q. Did you attend any other schools between the time you started attending school when you were nine years old to the time you were eleven?

A. No sir.

[fol. 51] Q. Did you attend two full terms of school?

A. Yes, sir, two full school years.

Q. Where did you next attend school—you stopped attending P. 165 when you were eleven—what school did you next attend?

A. I didn't immediately attend any other school. You see 1909 I came to America—I attended business school later on.

Q. How old were you when you next attended school?

A. After I came from Greece in 1915.

Q. When did you leave for Greece that time?

A. 1913 and I came back in 1914.

Q. In 1915? You stated 1914?

A. I started going to school again in 1915.

Q. What school did you then attend?

A. Wolworth Institute, 72nd St. and Broadway, New York City.

Q. How old were you when you started attending that school?

A. About fourteen years—I don't remember exactly.

Q. How long did you attend Wolworth Institute?

A. Nine months.

Q. What kind of school is it?

A. Taking up business—stenography, typewriting, etc.

Q. What was the next school you attended?

A. I didn't attend any other school.

Q. You didn't attend school after you were fourteen years of age?

A. No sir.

[fol. 52] Q. Then it was 1915 that you attended the Wolworth Institute?

A. Yes, sir.

Q. From that time until 1923 you attended no school?

A. No, just nine months I attended the Wolworth Institute.

Q. What did you do from 1915 until 1923 when you left for Greece?

A. In 1912 I started working.

Q. For whom did you work first?

A. First I worked for the Webster Letter Company, 34th St. and 8th Ave., New York City.

Q. How long did you work for the Webster Letter Company?

A. One year, 1917 to 1918.

Q. What months?

A. I don't remember the months now, it must have been around September 1917.

Q. You stopped about when?

A. 1918 about July or August.

Q. Who did you work for next?

A. The Industrial Management Engineering Company at 232 West 32nd St., New York City.

Q. How long did you work there?

A. One year—as soon as I quit the Webster Letter Company I immediately got into the other place, about July 1918.

Q. To what month did you work in 1919?

A. July or August 1919.

Q. Where did you next work?

A. H. C. Phillips & Co.

Q. What address?

[fol. 53] A. That was on Fifth Avenue, the address I don't remember—about 43rd St. and Fifth Ave.—that went out of business.

Q. How long were you employed there?

A. About nine months I guess.

Q. That would be from July or August 1919 to 1920?

A. Yes.

Q. About what month?

A. Nine months from August it would be about March 1920.

Q. Who did you work for next?

A. LeRoy Sargent & Company, stock and bond house, between 4th and 5th Avenue-, and 40th Street, New York City, the address I don't remember now.

Q. How long were you employed there?

A. About two years.

Q. You started in what month?

A. In 1920, April 19th.

Q. You worked there until when?

A. July 1922.

Q. Where did you next work?

A. I didn't work again.

Q. You went to Greece in 1923?

A. Yes.

Q. Where did you stay during the time you weren't working?

A. I stayed at home.

Q. With whom did you make your home?

A. With my mother and brothers.

Q. What address?

A. 46 West 66th St., New York City.

[fol. 54] Q. How old were you when you returned to Greece in 1913?

A. 13 or 14 years.

Q. What did you do then, from the age of 11 to the age of 13?

A. I didn't do anything.

Q. Didn't go to school?

A. No.

Q. Why?

A. I was ahead in two years—I was quite ahead in public school—I left in 8 B.

Q. In two years?

A. Yes.

Q. Have you any of your school papers anywhere?

A. No, I didn't graduate in public school—I went as far as 8 B.

Q. What reason had you for not attending school from the age of 11 to the age of 13?

A. We had to move from that place and then I didn't attend any school.

Q. Where were you living at the time?

A. You mean after I left that place—we moved to 45 West 45th St., New York City.

Q. Where did you move to?

A. On the East side.

Q. What address?

A. The exact address I don't remember now, between Lexington and Third Avenue.

Q. On what street?

A. It must have been 34th Street.

Q. Aren't there any schools in that vicinity?

A. I don't know.

[fol. 55] Q. You must have had some reason other than

that you have made, for not attending school when you were a little girl like that?

A. I don't know, but I was ahead—only two grades then. I should have been graduated you see.

Q. Why didn't you attend school and graduate?

A. I didn't care to study any more, that's why.

Q. Are you sure, realizing that you are under oath to tell the truth, that you were in New York from the age of 11 to the age of 13?

A. Me? Sure of what?

Q. Are you sure, realizing that you are under oath to tell the truth, that you were in New York from the age of 11 to the age of 13?

A. Yes sir. I left in 1913 all right.

Q. Do you know the name of the ship on which you left for Greece that time?

A. Yes. S. S. "Athenia."

Q. Have you the date of departure?

A. It must have been September when I left, the date I cannot give you.

Q. Where were you living when you left for Greece in 1913?

A. I lived in that house between Lexington Ave. and Third Ave., New York City.

Q. How long did you live there?

A. I don't remember—a year or more.

Q. You remember other addresses but you don't seem to remember that period where you didn't attend school?

A. You see we moved to so many houses I can't remember them all; we moved first on Columbus Ave., and on [fol. 56] 45th St.,—how can I remember all those addresses? It is not so easy.

—. What salary did you get in your first position?

A. About $15.00.

Q. How much did you get in your second position?

A. About $18.00.

Q. The third position?

A. $20.00.

Q. You worked in four different places?

A. (Alien counts on fingers) Webster, Phillips, Industrial and Le Roy Sargent—yes, four.

Q. What pay in the last place?

A. $22.00 a week.

Q. What kind of work did you do?

A. Typing and stenography.

Q. Can you give me a detailed description of the property which you people claim to have in Greece?

A. What do you mean—just how much it is?

Q. A complete description—value, etc.? What the property consists of—value?

A. It is a big store and house. How much the land is I cannot give you exactly, you see, it is located in different places in Volo.

Q. Start in at one place and tell us what property there is there. Is it in the same city or different cities?

A. Well it is out of the city.

Q. Tell us what the property is.

A. It is a big land property at Xirokembos—a vineyard.

Q. How large is it?

A. It is very large, I don't know the exact area.

[fol. 57] Q. What is it worth?

A. All of the property I know, but I cannot give everyone separate to you.

Q. What other pieces of property have you there?

A. We have another near the same place—contains about 100 olive trees.

Q. Do you know the value of that?

A. No.

Q. What other property have you?

A. Dakres, the name of some land near Volo with about 50 olive trees.

Q. Do you know the value of that?

A. No, I know all together.

Q. What other property have you?

A. At Makirnitsa there is a big house and a big store.

Q. Is that all there is at Makirnitsa?

A. Yes, but out further from Makirnitsa there is something else.

Q. What?

A. It is a big forest.

Q. Do you know what that is worth?

A. No, I am not able to give you the exact value but I know all together.

Q. Any more property?

A. One forest and another one in two places.

Q. How many separate pieces of property have you there?

A. Six all together.

Q. Where is the other forest?

A. Near Makirnitsa also.

Q. What kind of a store is this at Volo?

[fol. 58] A. A tannery.

Q. Did they or do they sell anything in the store?

A. Yes, wholesale skins and hides.

Q. Do they make different kinds of leather?

A. Yes.

Q. Did you own the home that you lived in while in Greece?

A. That is in Makirnitsa, the one I told you—the big house.

Q. Is this translation of a list of property held by your mother in Greece, taken from these photostatic copies of document 16126 written in Greek?

(Both English and Creek copies being introduced as Exhibit "A").

A. I never saw the black ones before.

NOTE.—Interpreter asked to read photostatic copy No. 16126 and also the English translation, and to see if the English was translated from the Greek. Interpreter states that it is all right, after checking up.

Q. Where did this photostatic copy of Greek document, which I have marked Exhibit "A", come from?

A. I don't know.

Q. By counting the items in the English translation I find that at least eight different pieces of property are listed instead of six?

A. I hope I didn't forget any.

Q. Can you think of any other property?

A. (Alien hesitates.) I am afraid I cannot think of any other just now.

Q. You stated you know the total valuation of this prop-

[fol. 59] erty held by your mother in Greece—what is it worth?

A. Between 800,000 and 900,000 drachmas.

Q. Do you know what this value is in American money?

A. There are 77 drachmas to a dollar.

Q. That would make the property about—have you any idea what, in American money?

A. I can't figure it out.

Q. Have you any brothers or sisters in Greece?

A. No sir.

Q. Any uncles or aunts or other relatives?

A. No sir.

Q. Who administered this property?

A. Who took care of it when?

Q. At any time?

A. When my father was living, do you mean?

Q. When your father was living who took care of it?

A. He did.

Q. When did he die?

A. 1924.

Q. Who took care of the property from 1924 until you left?

A. That is the reason I stayed in Greece—to supervise.

Q. Did you manage all this property yourself?

A. Yes, I did.

Q. Did you conduct the tannery?

A. Yes, I had somebody working there and supervised his work.

Q. How many employees did you have all together?

[fol. 60] A. About ten.

Q. Did you manage all of them?

A. I had somebody to manage them and I supervised the work.

Q. You were continually in touch with all this property from the year 1924 until you left Greece?

A. Yes.

Q. When did you leave Greece this time?

A. July 1930.

Q. You had continuous supervision of this property from 1924 to July 1930?

A. Yes.

Q. You cannot remember the items or parcels of property or description of them?

A. Haven't I given you them?

Q. There are some you haven't given us—there is one place says "a large house and two small houses"?

A. Yes, I didn't mention them because they are hitched together.

Q. There is a store or factory? Or whatever you call it on that?

A. Yes.

Q. Who accompanied you to the United States in 1909?

A. Always my mother did.

Q. Did your mother live with you in the U. S. until 1913 when you went to Greece?

A. Yes, we never separated.

Q. She was with you in New York all this time?

A. We never separated.

Q. When you returned to the U. S. in 1914 did she re-
[fol. 61] turn to the U. S. with you?

A. O, yes.

Q. Did you go back to Greece again with her after that?

A. When?

Q. In 1923? You didn't go anywhere from 1914 to 1923—you resided in New York—in the United States?

A. Yes just one year we went over.

Q. Why didn't your mother live with her husband in Greece?

A. I will tell you. My father wanted her to come to her sons with his intention, to come over, so she went as he wished.

Q. You would think he would rather have his wife stay with him than have her stay with his sons?

A. He wanted her to come.

Q. Did she have any real reason for not staying with your father? Did they ever quarrel?

A. Never.

Q. Did your father attempt to join your mother in the United States?

A. That was his intention.

Q. Did he try to come to the U. S.?

A. He didn't come but his intention was to come to us.

Q. Why didn't he come?

A. I don't know.

Q. During the time you were there in 1913 and 1914 did he state why he didn't come?

A. I guess he couldn't settle up the property, that's why.
[fol. 62] Q. Who supported you and your mother while you were in the U. S.?

A. My brothers.

Q. Did your father ever contribute anything to your support?

A. No, as long as my brothers could afford to support us he didn't.

Q. Did he send you any money at all during all these years?

A. No.

Q. Sent you nothing?

A. No, he kept his money there you see, as long as there was any; now my brothers took care of us well enough.

Q. On what ship did you land in Canada?

A. Now?

Q. Yes.

A. SS "Alaunia."

Q. What date did you arive?

A. The 28th.

Q. Have you a Canadian Immigration landing card?

A. Yes sir.

(Alien presents Greek passport No. 325, issued to Antigone Margareten Polymeris, on January 13, 1930. Expires at the end of year unless renewed. This passport stamped "Legation of Japan—Athens, Greece, January 14, 1930 to go to Japan." Also bears a French visa dated January 15, 1930, indorsed showing embarkation at Cherbourg July 19, 1930 and is also indorsed by the British Passport Control officer at Athens, Greece on the 15th day of January [fol. 63] 1930. Good for the Journey to the United Kingdom and Canada for the purpose of travel. Available for Miss A. Polymeris only. Stamped at the Dominion Government Immigration office, Quebec, July 27, 1930. "J. A. L." Admitted non-immigrant. Also presents Canadian Immigration Landing card showing arrival on the SS "Alaunia", Antione Polymeris. Name appears on return sheet 6-3. Indorsed, three weeks—admitted non-immigrant.)

Q. When you left Greece was it your intention to go to Japan?

A. No sir.

Q. Why did you obtain a Japanese visa?

A. Because that's what they told me to do; to get transit visas.

Q. Transit visas to go where? Transit visas through Canada?

A. Yes.

Q. Who told you to get transit visas?

A. My brothers told me.

Q. Who advised them to get transit visas?

A. I presume the lawyer that they got in touch with my case.

Q. A lawyer?

A. Yes.

Q. What lawyer is that?

A. Mr. Van Riper.

Q. Was it all arranged before you left Greece that you were to obtain visas to go to Japan and a transit visa to go thru Canada on your way to Japan, so that you could land [fol. 64] in Canada and come to the United States and apply for admission?

A. Yes.

Q. Who arranged all that?

A. Of course my brothers wrote me but I guess it is through the lawyer.

Q. Do you know for a fact that it was this lawyer that arranged all this?

A. O, yes.

Q. Then why did you take this method to enter the United States?

A. This is the right way—to ask for permission to the U. S.

Q. You asked it from the United States Consul in Athens, Greece, didn't you?

A. Yes, but they wouldn't grant me a non-quota permit.

Q. When you were examined by the Canadian Immigration officer at Quebec, did he ask you or did you tell him whether or not you were going to Japan?

A. Yes.

Q. What did you tell him?

A. I told him I was going.

Q. You had no intention of going to Japan?

A. No.

Q. You were going to Canada in order to apply for admission to the U. S.?

A. Yes, I thought this was the right way.

Q. Can you tell the name of the ship on which you originally came to the U. S. and the port where you landed?

A. SS "Themistocles" at New York City.

[fol. 65] Q. What was the date of arrival?

A. Around March or April 1909.

Q. How do you know this—were you told it or do you recollect it?

A. I don't quite recollect but always we were speaking of it.

Q. On what ship did you next come from Greece?

A. In 1914 on the SS "Ioanina."

Q. What was the date of arrival?

A. In October 1914.

Q. Where did you land that time?

A. In New York.

Q. Did you go to Ellis Island?

A. Not on the "Ioanina"—we were first-class.

Q. Those were the only two times you landed direct in the U. S. from Greece?

A. Yes.

Q. Why didn't you return to the United States sooner?

A. This time you mean?

Q. Yes.

A. I always wished but I coudn't.

Q. Why not?

A. Because I tried to get a non quota visa.

Q. Why didn't you dispose of the property?

A. I couldn't get the right worth of it and it was really a pity to give it for nothing, you see.

Q. Did you finally sell the property?

A. I put it in the hands of an agent.

Q. What is the name of the agent?

A. N. Melichios on Constata St., Volo, Greece.

Q. When did you place your property in his hands for [fol. 66] sale?

A. In January.

Q. You stated in your previous hearing that you applied at the American Consulate in Greece for an extension of time to stay in Greece because of business matters?

A. Yes.

Q. That is correct, is it?

A. Yes.

Q. How did you apply?
A. By letter.
Q. On what date did you apply?
A. On many dates; the first time in January 1924.
Q. What did he tell you.
A. He told me to give the reason for staying longer.
Q. Did you give him the reasons for that?
A. Yes; he said that when I am already I should go there personally.

A photostatic copy of a letter from the American Consul at Athens, Greece, dated January 10, 1924, addressed to Antigone Polymeris, Volo, Greece, is read to you. Letter which follows, marked Exhibit "B", read to alien:

"In reply to your letter of Jan. 3rd, I have to inform you that your papers cannot be renewed for a stay longer than six months time unless you can furnish very good reasons for your longer delay. If you are ill, it will be necessary to send a Doctor's certificate to this office and if you are [fol. 67] delayed on account of personal business you will have to explain in detail all the circumstances which make it necessary for you to request an extension of time.

I am, Madam,

Yours very respectfully, W. L. Lowrie, American Consul General."

Q. I note that he says if you are ill you should send a doctor's certificate and if delayed on personal business you will have to explain in detail all the circumstances which make it necessary for you to request an extension of time. Did you give him this information in detail?
A. Yes.
Q. Have you a copy of that letter?
A. I haven't got it.
Q. Was there anybody ill at that time?
A. No, my father died in February.
Q. This was January?
A. It was before my father died.
Q. Was your mother ill?
A. No sir.
Q. Was your mother ill after your father died?
A. Ill a little bit, yes.

Q. Your atttention is invited to the second paragraph of photostatic copy of a letter from the Consulate General at Athens, Greece, dated March 20, 1929, which I marked exhibit "C", directed to Mr. Harold Van Riper, 1 Broadway, New York City, and which I will now read to you.

(The following quotation read to alien):

"Briefly summarizing the status of Mrs. Polymeris and [fol. 68] her daughter, it appears that they last arrived in Greece about September 1, 1923 and that on January 3, 1924, they wrote to this Consulate General relative to a renewal of their temporary stay abroad, to which a reply was made on January 10, 1924, to the effect that 'If you are delayed on account of personal business (or illness) you will have to explain in detail all the circumstances which make it necessary for you to request an extension of time.' Since this letter was sent nothing further was heard from Mrs. Polymeris nor is it recorded that she ever appeared at this office in person until the present month, to be exact, March 13, 1929."

You note there that the American Consul states that you never replied to his letter of January 10, 1924, marked exhibit "B", nor did your mother appear in person at the Consulate and apply for a visa.

A. I did go—I did write.

Q. I am calling your attention to the fact that the American Consul states that nothing was heard from your people from January 10, 1924 to March 13, 1929?

A. That is not right.

Q. Have you any copies of letters directed to the American Consulate at Athens, Greece, relative to this matter?

A. The Consul wrote me to give him an explanation and I did write to him.

[fol. 69] Q. Did you write to him after that?

A. Yes.

Q. He says you did not.

A. In 1925 I wrote again and he said it was impossible to give a non-quota visa.

Q. How long had your father been sick before he died?

A. He was sick when I went over.

Q. How sick?

A. About six months.

Q. How long was he seriously ill—when it was found out he was going to die?

A. About at the end of January.

Q. Was that at the time that you wrote this letter to the American Consul that he was sick but you didn't expect he would die?

A. No, I didn't expect he would die.

Q. Now isn't it a fact that the reason for your not making an application for return to the U. S., of which there is a record, until March 13, 1929, was that you intended to stay in Greece because your father died and you wanted to stay there and look after your business?

A. I never intended to stay there.

Q. Didn't you change your mind after your father died?

A. In 1926 I hired a lawyer to handle the case in Athens and he couldn't succeed.

Q. What was the name of the lawyer?

A. Mr. J. Tsatsones.

Q. What did this lawyer do?

A. He couldn't succeed.

Q. He couldn't succeed in what?

[fol. 70] A. In getting me a quota visa.

Q. And also your mother?

A. O-, yes, every time.

Q. When did you first hire a lawyer in New York?

A. In 1926.

Q. Did you go to the American Consulate in person after he wrote you in January 1924?

A. I only went in person when Mr. Van Riper sent me those papers.

Q. What papers?

A. I left some papers with you the other day.

Q. These papers I have shown you marked exhibits?

A. It must be them.

Q. I will introduce these documents, with your permission, as exhibits in this case. Do you want them made a part of the record?

A. That is what I brought them to the American Consul for.

Q. We will introduce them as exhibits in this case. I have already marked the list enumerated of the property, Form 16126 as exhibit "A". The letter from the American Consul

in Athens, Greece, dated January 10, 1924, exhibit "B"; the photostatic copy of the letter of the American Consul in Charge at Athens, Greece, dated March 20, 1929, is marked exhibit "C". I now have letter from Mr. Harold Van Riper dated February 22, 1929, to the American Consul at Athens, Greece, which I marked exhibit "D". Letter of Attorney Van Riper of January 22, 1929, addressed to the Honorable Henry L. Stimson, Secretary of State, [fol. 71] Washington, D. C., is marked exhibit "E". Photostatic copy of letter dated August 3, 1929, from the Department of State, Washington, D. C., number 811.111 is exhibit "F". Letter of Attorney Harold Van Riper of August 14, 1929, addressed to the Honorable Secretary of State, Washington, D. C. is marked exhibit "G". Photostatic copy of letter of August 19, 1929, directed to Mr. Harold Van Riper, One Broadway, New York City, I have marked exhibit "H". Affidavit of Gus Polymeris of January 12, 1929, is marked exhibit "I". Supporting affidavit of Polimeros Polimeros I have marked exhibit "J", and Declaration of Departing Alien, signed by Aspasia Polymeris and Antigone Polymeris, of August 15, 1923, has been marked by me as exhibit "K".

Hearing in the case of Aspasia Polymeris reopened on August 6, 1930, at 3:55 P. M., with the following Board present:

Inspector in Charge, J. W. Trudell, Chairman; Ruth M. Hodges, Stenographer-Secretary; Inspector C. D. Phelps.

Ted Costes, Interpreter.

Alien duly sworn and questioned by Chairman through Greek interpreter, who had been duly sworn.

Q. Where did you live in the United States?

A. I don't remember the name of the streets unless I have my daughter here; Columbus and Third Avenue.

[fol. 72] Q. How long did you live on Columbus Avenue?

A. Fourteen or fifteen months, I am not sure.

Q. How many years did you live in the U. S. all together?

A. Fourteen years.

Q. What year did you come to the U. S.?

A. My daughter can give you all the information.

Q. We are asking you.

A. I not got no education—I don't remember things.

Q. It also appears in the record of your previous hearing that you remained in the United States fourteen years after your first landing in 1909—is that correct?

A. About thirteen years all together—we were over a year in Greece during that time.

Q. Then the statements made in your first hearing—that you were here fourteen years after the first landing—is not correct.

A. No, I understood them to state all the time I was here.

Q. Why did you go to Greece in 1913?

A. To see my husband and property.

Q. How long have you been in Greece this time?

A. Either six or seven years.

Q. Do you remember the name of the ship on which you came to the U. S. the first time?

A. SS. "Athenia," and I returned to Greece the first time on the SS. "Themistocles", and I came back on the SS. "Ioanina."

[fol. 73] Q. Do you remember any dates?

A. No I remember the month.

Q. Do you remember the year?

A. No.

Q. Did your husband ever live in the U. S.?

A. No he sent me first and he tried to come.

Q. Why didn't he come to the U. S.?

A. He couldn't find the right parties to live on his land—his property.

Q. Was he in good health all the time?

A. Never was sick.

Q. How were you supported while living in New York?

A. My sons.

Q. Did your husband send any money to you at any time while you were living in the United States?

A. I had my sons so I had all the money I wanted.

Q. Did you husband have any money in Greece?

A. He had plenty of money but some robbers hit him in the head one night with a stick to take his money and he was sick for five months.

Q. But he never sent you any money?

A. No.

Q. You say he was hit on the head by a robber—when did that happen?

A. He died about five years ago—I don't remember good.

Q. Where were you living when this happened to your husband? Were you in Greece?

A. I was in New York City but I went over there before [fol. 74] he died; he lived five months after he was hit.

Q. Did you go to Greece because your husband was hit?

A. Yes, because he was sick.

Q. Was he in a hospital before he died?

A. No, he was in the house.

Q. Can't you tell us where you lived in the United States at the different address, during the thirteen or fourteen years which you claim to have lived here?

A. No, I cannot remember a thing about it—I never asked the name of the street or the number.

Q. Who did you make your home with—who did you live with in New York?

A. My two sons and daughter.

Q. Why did not you return to the U. S. after your husband's death?

A. I couldn't leave the property alone; I was looking for the right party to sell.

Q. Did you manage this property while in Greece?

A. Me and my daughter both.

Q. Can you give me a list of the property which you claim your husband left you in Greece?

A. Xerclambo.

Q. What is there there?

A. Grape vines.

Q. What other property?

A. A house in Volo and just land in Dacres.

Q. What else?

A. A house and land at Makirnitsa and different trees—[fol. 75] fruit trees—lemons and oranges, apples and pears. At Youfliti, almond trees and walnut trees and olive and fig trees. That's all the property I can remember.

Q. Where did you live in Greece during the last six or seven years?

A. I spent a year and a half in Volo. Before my husband died I went there and stayed after he died to dispose of the property.

Q. Then from sometime in 1924 you lived in Athens?

A. About that; before he died I spent a year and a half in Volo and the rest of the time in Athens.

Q. Were you living in Athens before you left on this trip?

A. Yes.

Q. Where was your daughter Antigone living during that time?

A. With me in Athens; always together.

Q. Did you go to the American Consul in Athens, Greece, when you returned from there after your husband's death for permission to return to the U. S.?

A. Yes I had papers to go there and stay six months and then come back, but because my husband died I had to stay there.

Q. I asked you when you went to the American Consul to get permission to come to the U. S.—what year?

A. After my husband died.

Q. Did you go personally?

A. We both went together.

[fol. 76] Q. When was that—in what year did you go to the American Consul with your daughter?

A. I don't remember—it is about two years ago.

Q. Then you lived in Athens four or five years before going to the American Consul, did you not?

A. My daughter went to the Consul and he said he would fix the papers and after that I didn't bother.

Q. But you were there four or five years before going to the American Consul?

A. My daughter took care of it.

Q. Who took care of your property in Volo and vicinity during the time you and your daughter were living in Athens?

A. I gave the property out on percentage.

Q. What kind of work did your daughter do in Athens during the years you lived there?

A. Nothing.

Q. How were you supported—how did you live?

A. My sons in New York City.

Q. Didn't you have enough revenue from your properties in Greece to live?

A. After my husband died we didn't get anything; they got the cream and we got the skim milk.

Q. Your daughter states that she lived in Volo and managed this property—supervised it—is that true?

A. Yes, my daughter supervised it.

Q. Your daughter lived in Athens and your properties are somewhere else in Greece, aren't they? How could she [fol. 77] supervise that property?

A. The farm was out on percentage.

Q. Then the daughter had nothing to do with it, did she?

A. It was in the hands of real estate agents and nobody supervised it.

Q. How far is Volo from Athens?

A. About twenty hours.

Q. How did you travel?

A. By boat and train.

Q. Are you sure your husband was attacked before you left the United States and not after you got to Greece?

A. Before I went to Greece.

Q. Did your husband order you to return to Greece to make your home with him?

A. Yes.

Q. Did he ask you to go and stay all the time?

A. Just to see him; he wrote to my sons to tell me to come and see him but my intention was to come back—not to stay there.

Q. Isn't it a fact after your husband died you changed your mind about returning to the United States and decided to stay in Greece?

A. My family is here and I wanted to come here—I have nobody there.

Q. Do you know the value of this property in Greece?

A. 800,000 to 900,000 drachmas.

Q. Why did you live in the U. S. and your husband live in Greece for these fourteen years which you were away?

A. He told me to come to see my sons.

[fol. 78] Q. Did you come here to stay or just to visit your sons?

A. I came to see them and then go back but year by year I liked it better and better and wanted to stay.

Q. If you were here visiting, isn't it a fact that when you returned to Greece in 1923 you were going home to Greece to stay?

A. I didn't go to stay.

Q. But you were going home after visiting here—staying from one year to another?

A. I went back but not to stay.

Q. Did you have trouble with your husband—were you separated from him?

A. No.

Q. But you were separated from him for fourteen years?

A. There is no separation between a Greek husband and wife.

Q. Your passport shows that you were going to Japan—did you have any intention of going to Japan when you left Greece?

A. I had to say that to come to Canada.

Q. Did you tell the Canadian Officer when you were admitted to Canada that you intended going to Japan?

A. No.

Q. Did he question you when you were admitted to Quebec?

A. No, he didn't ask me.

Q. Was all this arranged, that you were to come to Canada to get to the United States by saying you were going to Japan, before you left Greece?

[fol. 79] A. I don't know anything about it; my daughter arranged that.

Q. But you know you were coming to the U. S. and not going to Japan?

A. Yes to Canada and the U. S. and not to Japan.

NOTE.—Alien presents Canadian Immigration landing card issued to Aspasia Polymeris at Quebec July 27, 1930, stamped "Admitted three weeks, non-immigrant, ex SS "Alaunia," sheet 6 Line 2, Canadian manifest."

ANTIGONE POLYMERIS recalled at 5:10 P. M., Interpreter Costes present.

Q. You are still under oath to tell the truth. Of what sickness did your father die?

A. Why they hit him—you see somebody hit him in his head, you see.

Q. When was that?

A. That was before I came to Greece.

Q. What month and year?

A. It must have been June or July—I don't remember now the month.

Q. Who hit him?

A. I don't remember now; those people we didn't discover up until now; it was night; they put a handkerchief on his eyes and hit him both sides of the head.

Q. What did they hit him for?

A. We used to send him money once in a while and they knew he had money and they wanted to rob him.

Q. Why was it necessary for you folks to send him money [fol. 80] if he had all this property?

A. Just a present.

Q. Your father couldn't live with what he was making in Greece, could he?

A. Yes, he could but his sons would send him some.

Q. How were you supported after your father died, in Greece?

A. From the property; every once in a while though my brother sent some, too.

Q. Isn't it a fact that your brothers sent you enough money from New York to support you because you couldn't get enough from the property?

A. We got some from the property but not enough to live on.

Q. Where did you live in Greece from 1923?

A. In Volo and then to Athens.

Q. How long did you live in Volo?

A. 1923 to 1926.

Q. Your mother stated that you lived in Volo about a year and a half and from that on you lived in Athens?

A. Sometimes she gets mixed up; in 1926 we came to Athens.

Q. What month?

A. In February.

Q. You lived in Athens continuously from February 1926 until you left for Canada?

A. Yes.

Q. Why didn't you go to the American Consulate during that time instead of waiting until March 1929?

A. In 1926 I got in touch with that lawyer and he didn't [fol. 81] succeed and he told me to come to my brothers in the United States but they didn't say anything all of the while until at last they got in touch with Mr. Van Riper; they weren't able to do anything themselves.

Q. Do you recollect my reading you an excerpt from a letter marked Exhibit "C" in which he stated that there is no record at the Consulate General's in Athens, Greece, from the time of the letter of January 10, 1924, marked Exhibit "B", to March 13, 1929, when you appeared at the Consulate?

A. That isn't true because in 1924, besides the one I referred to, I wrote another letter—I don't remember the month, but after my father died in 1925 I wrote again and in 1926.

Q. Did you go at any time to the Consulate before March 13, 1929?

A. No.

Q. You were living in Athens, why didn't you go?

A. Because I didn't think it was any use.

Q. The Consul states in his letter of January 10th, marked Exhibit "B", that you should present the reasons for wanting an extension?

A. I did explain.

Q. You didn't appear personally, although you were there a matter of three or four years?

A. You see I told you I had been in Athens but you see all the time, but in 1925 they refused me and I didn't think he would grant me a visa if I went personally, as he refused me in his last letter.

[fol. 82] Q. Where is this letter of 1925?

A. I haven't got it.

Q. But you have the one of 1924?

A. I didn't think it would help any. The name of the Consul started with a "G", but I don't remember now.

Q. Did you work while in Athens?

A. No.

Q. Who took care of your properties from February 1926 up to this time?

A. I used to go over very often.

Q. You said at one time it took twenty-four hours to get there?

A. Yes. I went often—I mean every once a month. You see I rented those places in the meantime.

Q. How did you rent them?

A. What?

Q. How did you rent them—on shares—charge so much a year for the rental of the property?

A. Yes, just like you rent a house.

Q. Apparently this property is not worth much in revenue. Your mother states your brother was obliged to send you money to support you—you got practically nothing from the property?

A. You can't expect to get much.

Q. But from property worth 800,000 or 900,000 drachmas it would seem you would derive enough revenue to live?

A. You cannot get what you should.

Q. Did you sell the produce from it—what you raised—[fol. 83] olives and things like that—doesn't that bring something?

A. Yes, we sold it and that brings a lot.

Q. Have you oranges, grapes?

A. No oranges.

Q. Lemons?

A. Yes.

Q. Walnuts?

A. Walnuts we have not much.

Q. It seems as though this property could have been sold from the time you originally came to the U. S. up until the time your father died?

A. It is not so easy—times are hard.

Q. Twenty years or more to sell property?

A. Twenty years?

Q. You said when you came to the states, your father was trying to sell his property and come to the states also?

A. His intentions were as I said; mine was to get back to my home in the United States.

Q. About what was the yearly income from this property when you managed it yourself? About what did you get for rents all together, I mean?

A. I see, O well, yes, about 50,000 or 60,000 drachmas; that would be 5,000 or 6,000 a year or about $450.00 a year;

seventy-seven drachmas equals a dollar of United States money.

Telegram from Commissioner of Immigration, Ellis Island, N. Y. Harbor, N. Y., showing arrival of Antigone Polymeris and Aspasia Polymeris in 1909 and 1914, as follows:

[fol. 84] ORDER OF EXCLUSION

"B 119 44 Govt.—CD New York, N. Y. 6 610P. 1050.
Aug. 6, P. M. 6:55.

Immigration Service, St. Albans, Vt.:

Aspasia Polymerou forty two and daughter Antigony age eight citizens Greece both arrived Steamer Themistocles April nineteen nine stop Aspasia Polimera forty nine and daughter Antigoni fourteen citizens Greece admitted Steamer Ioannina November six nineteen fourteen no record departure prior March nineteen twenty nine.

Uhl."

Form 505, in triplicate, showing arrival of aliens Antigone Polymeris and Aspasia Polymeris on April 19, 1909, and November 6, 1914, respectively, attached to record. Arrival was at New York and Form 505 is signed by Byron H. Uhl, Assistant Commissioner.

Inspector Phelps: I concur in the decision arrived at by the Board on August second—that both Antigone and Aspasia Polymeris be rejected as not being in possession of valid quota Consular Immigration visas.

Secretary Hodges: I second the motion.

Chairman Trudell: I make it unanimous.

(Signed) J. W. Trudell. J. W. Trudell, Chairman.

(Signed) Ruth M. Hodges. Ruth M. Hodges, Secretary, Immigration Clerk.

[fol. 85] EXHIBITS

The following exhibits are attached hereto.

(a) Document in Greek language translated showing the status of Polymeris' property in Greece.

(b) Letter of the American Consul General to Antigone Polymeris.

(c) Letter of American Consul in Charge at Athens, Greece, to Harold Van Riper, Attorney for the relators.

(d) Reply of Harold Van Riper, Attorney for the relators.

(e) Copy of letter from Harold Van Riper, Attorney for the relators, to the Honorable Secretary of State.

(f) Letter from the Honorable Secretary of State to Harold Van Riper, Attorney for the relators.

(g) Copy of letter from Harold Van Riper, Attorney for the relators, to the Honorable Secretary of State.

(h) Letter from the Honorable Secretary of State to Harold Van Riper, Attorney for the relators.

(i) Affidavit of Gus Polymeris.

(k) Affidavit of Aspasia Polymeris and Antigone Polymeris.

[fol. 86] EXHIBIT "A"

Affidavit

Translation

Number 16126

At Athens, and in the Office of the Justice of the Peace, this day the 9th of November, 1928, Friday and 12 noon, before me, the Justice of the Peace, Anthony Constantinou, and in the presence of the assistant secretary, S. Kourkoumba, at the request of the Attorney of A. Polymeris, Mrs., S. Tsatsonis, there appeared the witness Spyridon D. Papademetriou, born at Volo, and residing at Athens, aged 60, formerly Inspector of the RR. Spapp, Christian Orthodox, who placed his right hand on the Holy Gospel and took the following: "I swear, knowing fully well the penalties for perjury, according to my best knowledge, as a former resident of Volo, and as possessing knowledge of the titles to property and being relative to the widow Aspasia Margariti Polymeri, that said widow Aspasia M. Polymeri, is the owner and possessor of the following property:

1) One house with two cottages and surrounding land situate at Makrinitsa, in the neighborhood of Koukourava,

Saint Magdalene, vauled at about 115,000 drachmas, bought by virtue of No. 5150 of the year 1902 contract drawn by the Notary Public of Volo, Kimon K. Kassimatis;

2) One Vineyard at Xirokambos, bought by virtue of the No. 7164 of the year 1923 contract drawn by the Notary Public of Volo, A. Tsakyri, valued at about 5,000 Drachmas as well as an olive orchard at Dakryes, valued at about 55,000 Drachmas;

[fol. 87] 3) Five stemmata land, now lots, about 7,000 pines, at Dakryes, as indicated by the records at the Hall of Records at Volo entered on the 6th of October 1890 and valued at 600,000 drachmas;

4) One orchard with the trees of all kinds therein at Kernana, three stremmata, with another such at Gefyri, of Makrinitsa, neighborhood of Koukourava, Saint Magdalene, bought by virtue of No. 14230 year 1910 Contract drawn by the Notary Public of Volo, Kimon K. Kasimatis, valued at 5,000 Drachmas;

5) 85 olive trees together with the land at Klima, at Makrinitsa, bought by virtue of the Contract No. 2972 year 1893 drawn by the Notary Public of Volo, Epaminondas H. Panagiotides; valued at about 45,000 drachmas;

6) Two Chestnut orchards of one stremma and a half of Dristelles, Makrinitsa, neighborhood Koukourava, bought by virtue of the No. 2971 year 1893 contract drawn by the Notary Public Epsminondas H. Panagiotides, valued at about 3,000 drachmas, or the total real estate property of Mrs. Aspasia, widow of Margariti Polymeris of Volo is valued at about 828,000 drachmas. Thus may God help me and His Holy Gospel.

Whereof these presents were drawn which were read aloud and approved and signed.

The Justice of the Peace, Anthony Constantinou.
The Assistant Secretary, S. Kourkoumbas.

The witness: S. Papademetriou.

Correct transcript done at Athens this day.
The Assistant Secretary, (Signed) S. Kourkoumbas.
(Signed) Spyros Th. Tsatsonis. The Seal of the Justice of the Peace.)

[fol. 88] The above is a true and correct translation done by me this 17th day of December, 1928 from the original Greek.

——— ———.

Sworn to before me this 17th day of December, 1928, in the County of New York, State of New York.

——— ———.

[fol. 89] EXHIBIT "B"

American Consular Service, Consulate General, Athens

January 10th, 1924.

Antigone Polymeris, Volo, Greece.

MADAM: In reply to your letter of Jan. 3rd, I have to inform you that your papers cannot be renewed for a stay longer than six months time unless you can furnish very good reasons for your longer delay. If you are ill, it will be necessary to send a doctor's certificate to this office and if you are delayed on account of personal business you will have to explain in detail all the circumstances which make it necessary for you to request an extension of time.

I am, Madam.

Yours very respectfully, W. L. Lowrie, American Consul General.

[fol. 90] EXHIBIT "C"

American Consular Service, Consulate General at Athens, Greece

March 20, 1929.

Mr. Harold Van Riper, Broadway 1, New York, N. Y.

DEAR SIR: This will acknowledge receipt of your letter of Feburary 22, 1929, written in behalf of Mrs. Aspasia Polymeris and her daughter, Antigone. The affidavits and other exhibits transmitted by you have been carefully examined in light of the refusal of the applications of the parties just

mentioned for a section 4-b visa which was refused at this Consulate General on March 13, 1929.

Briefly summarising the status of Mr. Polymeris and her daughter, it appears that they last arrived in Greece about September 1, 1923 and that on January 3, 1924, they wrote to this Consulate General relative to a renewal of their temporary stay abroad, to which a reply was made on January 10, 1924, to the effect that "If you are delayed on account of personal business (or illness) you will have to explain in detail all the circumstances which make it necessary for you to request an extension of time." Since this letter was sent nothing further was heard from Mrs. Polymeris nor is it recorded that she ever appeared at this office in person until the present month, to be exact, March 13, 1929.

In view of the foregoing this office is compelled to classify Mrs. Polymeris and her daughter as quota immigrants as [fol. 91] distinguished from non-quota immigrants returning to the United States after a temporary visit abroad. Under the present law there are but 100 quota visas to be granted for Greece each year, 50 of which are given to fathers and mothers of American citizens and the remaining 50 are reserved for wives and unmarried children under 21 years of age of Greek aliens legally residing in the United States, so long as there are any such applicants on file.

Persons who have already applied within the categories above described, will exhaust the 100 visas annually for several years.

It is regretted that no more favorable information may be given you in this matter.

The enclosures transmitted by you are returned herewith.

Very truly yours, Leland B. Morris, American Consul in Charge.

[fol. 92] EXHIBIT "D"

(Copy)

February 22nd, 1929.

To the Honorable the American Consul, Athens, Greece.

DEAR SIR: I write you on behalf of Mrs. Aspasia Polymeris and her daughter, Miss Antigone Polymeris, who

will call on you shortly as applicants for non-quota immigration visas. Their whole story with the exception of such additional information as they personally may be able to give you, is contained in the enclosed affidavits and exhibits.

I discussed this matter at considerable length in the Bureau of Immigration of the Department of Labor and the Visa Control Office of the Department of State, and, after examining the documents, they advise me to have said aliens call at your office with the originals of said documents and make their formal applications. In addition your own department gave me the enclosed form letter and told me to transmit the information therein contained to my clients, which I have done, as I am sure that they can fully meet all of the requirements of A, B, C and D thereof.

Therefore, my clients will call upon you very shortly with an original and a duplicate of the enclosed documents, and I hope you will be good enough to advise me of your decision in the matter. I feel that this is one of the rare instances in which it is possible to prove beyond question a continuing intent on the part of the aliens to remain resi-
[fol. 93] dents of the United States, and that you will concur in my opinion after examining enclosed documents and interviewing my clients.

Thanking you for past courtesies, and in advance for that herein requested, I am,

Yours very truly, Harold Van Riper.

[fol. 94] EXHIBIT "E"

July 22nd, 1929.

Honorable Henry L. Stimson, Secretary of State, Washington, D. C.

DEAR SIR: I do not know whether or not you will remember me as the associate of your old friend, Colonel Francis E. Hamilton, formerly solicitor to the Collector of the Port of New York.

However, I remember very well that when you were United States District Attorney for the Southern District of New York, you did not hesitate so to advise the govern-

mental departments when you believed they were in the wrong.

Enclosed herewith I hand you a set of documents that was sent to the American Consul General at Athens, in the cases of Mrs. Aspasia Polymeris and her daughter, Antigone, together with his reply, thereto, the original set of documents being in the hands of the aliens abroad, and I am sure that after perusing the same you will agree with me that both of these ladies are residents of the United States who have been temporarily abroad, and that they are entitled to receive non-quota immigration visas to return to their home in New York where Mrs. Polymeris' two American citizen sons are awaiting them.

Before sending this case forward to Athens, I discussed it at your Visa Control Office and received the usual reply, "This, being a visa matter, is solely within the control of our consul abroad." This is all very fine, but I personally [fol. 95] have been told by consuls that there is in vogue in the State Department a merit and demerit system similar to that which obtains among the pupils in our elementary schools, that if a visa is issued and the immigrant thereafter is excluded by the Immigration Authorities at the port of entry, the issuing consul receives a demerit mark and that in close cases, even when they believe the alien is entitled to receive a visa, they would rather not take the chance of issuing it with the possibility of exclusion and the consequent demerit mark. I submit that this is fair neither to the alien nor to the consular officer. It deprives the first of justice, and the latter of the free exercise of his discretionary power.

This question as to what constitutes residence is one that frequently has been passed upon by the Courts, and I particularly refer you to the decision of the United States District Court for Vermont, in the case of U. S. ex rel. Sabato Serpico vs. Trudell, which was reported in the United States Daily of November 23rd, 1928, where the alien was absent for more than ten years without losing his residence.

In addition it is to be remembered that the only section of the Immigration Act of 1924 that gave consular officers the right to refuse visas is Section 2 F, and then only in the case where he has reason to believe the alien is inadmissible

under the Immigration Laws and these aliens certainly are not inadmissible. Incidentally it is to be remembered that the visa itself is only prima facie evidence of the alien's [fol. 96] claimed status and that it is subject to question by the Immigration Authorities at the port of entry. See Sections 2 G, 9 F, and 10 F, of the Act of 1924. This visa question is somewhat analogous to the currency depreciation certificates issued by consuls, which the Treasury Department for a long time claimed could not be attacked by importers, and that eventually in DeForest vs. Redfield, 4 Blatch. 478, U. S. Circuit Court, Southern District of New York at page 484, it was held:

"The law makes it necessary, that the importer should procure the certificate of the United States consul or commercial agent at the foreign port from which the goods are shipped, not only as to the value of the foreign currency in which the invoice is made out, but as to the value of the goods in such port, and without it they cannot be entered at the Custom House at all; but it has never been considered that such certificate was more than prima facie evidence, either as to the value of the currency or of the merchandise. It would be singular, indeed, if the certificate of such inferior officers of the Government in relation to questions of fact could be held to conclude the party against whom they were presented from showing the truth."

What makes this thing all the more important, is the fact that by enacting Section 13 B of the Act of 1924, Congress made it possible for returning residents to enter without non-quota visas or re-entry permits if they can reach a port of entry in the United States so as to come within [fol. 97] the jurisdiction of the Secretary of Labor, and establish their status, which, of course, is impossible in this case because steamship companies will not carry passengers without visas, due to their fear of incurring the thousand dollar fines. The only other method is to place themselves on either the Canadian or the Mexican borders and endeavor to secure their rights through the courts. This should not be so, and it is absolutely contrary to our American ideals of fair play.

For all of the above reasons, I respectfully ask that this case be reviewed carefully, and that the American Consul General at Athens be asked to reconsider it to the end that these aliens receive non-quota visas.

Thanking you, I am,

Yours respectfully, Harold Van Riper.

[fol. 98] EXHIBIT "F"

Department of State, Washington

In reply refer to 811.111, Polymeris, Aspasia and Antigone.

August 3, 1929.

Mr. Harold Van Riper, 1 Broadway, New York, New York.

SIR: The receipt is acknowledged of your letter of July 22, 1929, with its enclosures, concerning the desire of Aspasia and Antigone Polymeris to return to the United States from Greece.

It appears from the communication dated March 20, 1929, from the Consul in Charge at Athens, that Mrs. Polymeris and her daughter arrived in Greece from the United States in September, 1923 and shortly thereafter made inquiry in regard to remaining abroad for a further temporary period but that prior to March, 1929, neither Mrs. Polymeris nor her daughter called at the Consulate General in order to obtain visas for return to the United States. It appears further that careful consideration was given by the Consul to the evidence presented in support of the applications of Mrs. Polymeris and her daughter for non-quota immigration visas under Section 4 (b) of the Immigration Act of 1924 but that they failed to qualify as aliens returning to the United States after a temporary visit abroad.

It may be stated in this connection that before an alien may qualify for non-quota status within the meaning of the section of the Act of 1924 referred to above, he must [fol. 99] show that he was previously lawfully admitted to the United States for permanent residence, that he went abroad with the intention of returning to the United States,

that he has an established domicile in the United States and that his stay abroad, if protracted, was caused by justifiable reasons over which he had little or no control.

It may be added that consular officers are responsible under the law for the classification of visa applicants and for the issuance or refusal of immigration visas to them. The Department therefore carefully avoids interfering with consular officers in the discharge of their responsibility by directing the action the officer should take on any individual case or by passing upon the sufficiency of the evidence submitted in support of an alien's claim to certain classification.

Assurance is given that non-quota immigration visas were refused in this case only because the Consul, in the absence of satisfactory evidence supporting the claim of Mrs. Polymeris and her daughter to non-quota status as returning aliens, had no other choice of action open to him under his legal responsibility. You may be sure, however, that every consideration will be given to their applications as quota immigrants when the status of the Greek quota permits.

Very truly yours, John Farr Simmons, Chief Visa Office.

Enclosures

1. Copy of letter to Consul in Charge at Athens from [fol. 100] Mr. Van Riper.

2. Letter to Mr. Van Riper from Consul in Charge at Athens.

3. Information sheet.

4. Copy of affidavit.

[fol. 101] EXHIBIT "G"

August 14th, 1929.

Honorable Secretary of State Washington, D. C.

In re 811.111, Polymeris, Aspasia and Antigone

DEAR SIR: I thank you for your very kind letter of August third, and note carefully what you say. The unfortunate

thing about it is that I was told all this before I took the matter up with Athens, as is set forth in the fourth paragraph of my letter of July twenty-second.

I disagree entirely with the findings of the Consul at Athens. I honestly believe that these people have taken no steps to impair their status as residents of the United States and I further believe that a court of competent jurisdiction would sustain such right if they could be permitted to come within its jurisdiction.

These people, asserting said claim of residence in the United States, are guaranteed by the Constitution thereof the right to enter its courts to enforce same, and, even if such claim is disputed, they being citizens of a friendly nation, are, under the principles of international comity, entitled to enter our courts to have their rights determined.

For all of the above reasons, I respectfully ask that the Consul at Athens be instructed:

(a) To issue non-quota visas to these people, bearing, if necessary, a warning to the Immigration Officials to detain them at the port of entry, so that they may resort to Habeas Corpus proceedings in the Courts here; or

[fol. 102] (b) If the Department still holds that it can give no instructions to Consuls in the matter of immigration visas, then instruct him to grant them visitors' passport to come here on business, the business being the enforcement of their rights in our courts. This the State Department has the power to do, because the Passport Act of 1918, as amended, and the Presidential Proclamation and Executive Orders issued thereunder, vest this function directly in the Secretary of State, and the Immigration Act of 1924 has no bearing on the question whatsoever.

It all seems so silly when one realizes that if a consular officer can keep residents of the United States from reaching its courts to review the legality of his action, then he has a greater power than any other officer of the United States, not excluding even the President himself.

Incidentally, permit me to say that I believe the Consul's interpretation of the law, and of his rights thereunder, is unsound, and that Section 2 (f) of the Act of 1924 merely gives him the right to refuse a visa when the alien is manifestly inadmissible under Section 3 of the 1917 Act because

of conditions such as illiteracy, physical incapacity, attachment to acarchy, etc. Certainly it cannot give him the right to bar a resident from reaching our courts to have his claim of residence judicially determined.

For all of the above reasons, I hope that you will find [fol. 103] some way to enable these people to secure a judicial determination of their just claims, and that it will not be necessary for them to resort to subterfuge to reach the jurisdiction of one of our courts.

Thanking you for past courtesies, and for that herein requested, I am,

Yours respectfully, Harold Van Riper.

[fol. 104] EXHIBIT "H"

Department of State, Washington

In reply refer to 811.111, Polymeris, Aspasia and Antigone.

August 19, 1929.

Mr. Harold Van Riper, 1 Broadway, New York, New York.

SIR: The receipt is acknowledged of your letter dated August 14, 1929, with further reference to the cases of Aspasia and Antigone Polymeris.

With regard to your statement that the aliens mentioned desire to obtain non-quota immigration visas under Section 4 (b) of the Immigration Act of 1924, you are referred to the Department's letter of August 3, 1929, to which there would appear to be nothing to add.

With reference to your request that the aliens in question be permitted to come to the United States as temporary visitors you are informed that Section 3 of the Act of 1924 defines as an immigrant any alien departing from any place outside the United States destined for the United States, except certain classes of non-immigrants one of which is "an alien coming to the United States temporarily as a tourist or temporarily for business or pleasure."

The regulations issued jointly by the Department of State and the Department of Labor under authority of Section 24 of the Act provide that " 'an alien visiting the United

States temporarily as a tourist or temporarily for business [fol. 105] or pleasure' shall be construed to mean an alien who, having a fixed domicile in some other country which he has no intention to abandon, comes to the United States to remain for a temporary period only."

Consular officers are responsible under the law for the classification of aliens applying at their offices for visas as immigrants or non-immigrants. The Department therefore carefully avoids interfering with consular officers in the discharge of their responsibility by directing the action to be taken in any individual case.

In the event that Mrs. Polymeris and her daughter take up with the Consul the matter of their desire to obtain visitors' visas he will accord due consideration to any evidence which they may submit in support of their claim to classification as non-immigrants.

Very truly yours, John Farr Simmons, Chief Visa Office.

[fol. 106] EXHIBIT "I"

Consulate General of the United States, Athens

In the Matter of the Application of ASPASIA PALYMERIS and ANTIGONE POLYMERIS for the Issuance to Them of Non-quota Immigration Visas under Section 4-b of the Immigration Act of May 26, 1914

STATE OF NEW YORK,
County of New York, ss:

Gus Polymeris, being first duly sworn according to law, on his oath deposes and says:

That he was born at Volo, Greece, is forty-three years of age, and emigrated to the United States in 1902.

That he was admitted to United States citizenship by the Supreme Court of New York County, N. Y. on March 15, 1915 under certificate No. 605851, Petition Volume 187, Page 46174.

That he is married and resides at 542 West 146th St., New York City, with his wife, and his brother Polymeros, who emigrated to the United States in 1907 and is now a declarant for American citizenship.

That he has invested in a restaurant business at 2288 Seventh Avenue, New York City, about $15,000, has an income of more than $5,000 per year and owns a five story building at 7130 Seventh Avenue, New York City, valued at about $40,000.

That he is the son of said Aspasia Polymeris, who was born in Volo, Greece, in 1869, and is the brother of said Antigone Polymeris, who was born in Volo, Greece, in 1898. [fol. 107] That his said mother and sister emigrated to the United States in April, 1909, ex S. S. "Themistocles," and his sister, Antigone, entered Public School No. 165, on West 48th Street, between 8th and 9th Avenues, New York City.

That more than four years later, on September 8, 1913, they left the United States temporarily for a visit to Greece, ex S. S. "Athene," returning to the United States in October, 1914 ex S. S. "Ioanina."

That thereafter deponent's said sister completed a secretarial course in Walworth Institute, W. 72d St. and Broadway, New York City and was employed from 1917 to 1918 by the Webster Letter Company, from 1918 to 1919 by Industrial Management, Inc., and, subsequently, by H. E. Phillips & Company, all of New York.

That nine years after their return from Greece, deponent's father, Margaritis Polymeris having become seriously ill, his said mother and sister left the United States temporarily for Greece on August 23, 1923 ex S. S. "President Wilson" with the fixed intention of returning within six months to their domicile in New York, as is evidenced by "Affidavit of departure of an alien resident making a temporary visit abroad," executed and sworn to by them at New York on August 15, 1923, hereunto annexed, marked "A", and made a part hereof, by the fact that his said sister left intact in New York her savings in the Bowery Bank and the Union Dime Bank, and the further fact that they left their personal effects in their home with deponent in New York City.

[fol. 108] That they arrived in Greece in September, 1923 and shortly thereafter deponent's said father died at Volo, Greece, leaving to deponent's mother real and personal property valued at 828,000 Drachmas, as per exhibit "B" annexed.

That deponent's mother became ill of the shock of her husband's death, and this fact, coupled with the additional fact that the considerable estate left by him required proper administration, caused deponent's said sister within four months to take up with the Honorable American Consul General the question of preserving their right to return to their home in the United States, evidenced by his letter of January 10, 1924, "C" annexed, which is further corroborative of the fact that they at no time intended to relinquish their residence and domicile in the United States.

That it took considerable time to wind up the estate, and, subsequently, deponent's said mother and sister sought earnestly to dispose of same, but conditions were not propit-ous, and they therefore delayed their return to their home in the United States from time to time in the hope that conditions in Greece would improve to the point where they could make such disposition without too great a sacrifice.

That they, together with deponent and his brother, Polymeros, believing that a considerable period of time must yet elapse before conditions would become favorable for the proper disposition of said property, and that it would be better for them to place the property in the hands of an agent for sale, and return to their home in the United [fol. 109] States, caused the annexed consolidated certificate of ownership (Exhibit "B") to be prepared and executed on November 9, 1928, for the effectuation of such purpose.

To sum up, deponent's said mother and sister have been residents of the United States continuously for nearly twenty years since their lawful entrance therein in April, 1909, and have never been absent therefrom even temporarily except the visit abroad during from September 1913 to September 1914, and the enforced absence due to the illness and death of deponent's father, the resultant illness of his mother, and the unsuccessful efforts to dispose of the estate, subsequent to August, 1923; their home has always been with deponent, his wife and his brother here their sole family ties; the education and business experience of deponent's sister have been had here, and her bank accounts have remained here during her temporary absence abroad.

Wherefore deponent respectfully prays that in view of all of the foregoing facts, the honorable, the American Consul General at Athens, will regard his said mother and sister as persons temporarily absent from their home in the United States, and will, accordingly, issue to them non-quota immigration visas under Section 4-b of the Immigration Act of May 26, 1924.

And he will ever pray.

Gus Polymeros.

[fol. 110] Subscribed and sworn to before me this 12th day of January, 1929. Kathleen R. Wallace, Notary Public, N. Y. County.

STATE OF NEW YORK,
County of New York, ss:

Polymeros Polymeris, being first duly sworn according to law, on his oath deposes and says:

That he is the brother of Gus Polymeris, the maker of the foregoing sworn petition; and is the son of Aspasia Polymeris and the brother of Antigone Polymeris, the persons referred to therein as applicants for non-quota immigration visas.

That he has read said petition and knows the contents thereof, that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to these matters he believes it to be true.

Polimeros Polymeros.

Subscribed and sworn to before me this 12th day of January, 1929. Kathleen R. Wallace, Notary Public, N. Y. County.

[fol. 111] EXHIBIT "K"

STATE OF NEW YORK,
County of New York,
City of New York, ss:

We, Aspasia and Antigone Polymeris, on oath, declare that we are 56 and 24 years, respectively, *years* of age and

have resided in the United States since 1916, and we are the persons to whom Greek T. passports number 2344 and 2338 were issued, which is now in my possession.

Our present address is 46 W. 66th St., New York, N. Y. We are temporarily leaving the United States from the port of New York on the Steamship President Wilson, sailing August 23, 1923 for the purpose of visiting relatives temporarily. We intend to return to the United States within six months where we have our son and brother respectively, Constantine Polymeris, at 46 W. 66th St., American citizen, engaged in restaurant business at 242 W. 145th St., N. Y. City, and am in possession of return prepaid ticket money.

I have (not) declared my intention of becoming a citizen of the United States.

X Aspasia Polymeris, Antigone Polymeris.

Subscribed and sworn to before me this 15th day of August, 1923. Nicholas J. Cassavetes, Notary Public. My commission expires Nov. 21, 1924. New York County, ——. New York County Register's No. 24093.

[fol. 112] No. 21773, Series B

STATE OF NEW YORK,
County of New York,
City of New York, ss:

I, James A. Donegan, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county, do hereby certify That said Court is a Court of Record, having by law a seal; that Nicholas J. Cassavetes, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, was at the time of taking the same a Commissioner of Deeds in and for said city and county, duly commissioned and sworn, and qualified to act as such; that as such Commissioner of Deeds, he was duly authorized by the laws of the State of New York to administer oaths and affirmations, to take affidavits and certify the acknowledgment and proof of deeds and other written instruments to be read in evidence or recorded in this state; and further that I am well acquainted with the handwriting of such Commissioner of

Deeds and verily believe that his signature to such proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 15th day of August, 1923.

James A. Donegan, Clerk.

[fol. 113] IN UNITED STATES DISTRICT COURT

[Title omitted]

RELATOR'S TRAVERSE

Relators for their traverse of respondent's return, respectfully show to this Honorable Court:

First. That they deny each and every allegation in said return contained to the effect that they are not "immigrants previously lawfully admitted to the United States who are returning from a temporary visit abroad" within the meaning of Section 4 (b) of the Immigration Act of May 26, 1924 (8 U. S. C. 204) and/or to the effect that they are quota immigrants who require visas for entrance into the United States under Section 13 (a) of said Act of 1924 (8 U. S. C. 213), and/or to the effect that there is any adequate evidence to support a finding that they have done anything whatsoever that can be construed as a relinquishment on their part of the domicile and residence established by them in the United States during the fourteen year period between 1909 and 1923.

Second. That the evidence shows that they are the type [fol. 114] of immigrants, returning residents, who are expressly exempted from the necessity of having any visa whatsoever by the provisions of Section 13 (b) of said Act of 1924 (8 U. S. C. 213).

Wherefore, they respectfully pray that said return for naught be held and esteemed, and that the writ of habeas corpus herein be sustained.

Aspasia Polymeris (her X mark). Antigone Polymeris.

Subscribed and sworn to before me this 20th day of August, A. D. 1930. Evangeline C. Turgeon, Notary Public.

[fol. 115] IN UNITED STATES DISTRICT COURT, DISTRICT OF VERMONT

In the Matter of the Application of ASPASIA POLYMERIS and ANTIGONE POLYMERIS for a Wit of Habeas Corpus vs. JOSEPH W. TRUDELL, Immigration Inspector in Charge, St. Albans, Vt.

Hearing on Habeas Corpus

Harold Van Riper for the relatrixes.
Harry B. Amey, U. S. Attorney, for the respondent.

OPINION OF THE COURT—Filed Aug. 22, 1930

HOWE, District Judge:

The relatrixes are returning Greek immigrants. On August 2, 1930, they were denied admission by a board of special inquiry at the port of St. Albans in the District of Vermont because they did not have immigration visas or return permits. The decision of the board has been affirmed on appeal.

This case is like Johnson v. Keating, 17 Fed. (2) 50. Here as there, the aliens are non-quota immigrants who had been previously admitted to the United States and were returning from a temporary visit abroad; here as there, they had no immigration visas or return permits; here as there, the rule amended since that case, now Par. 2, Subd. I of Rule 3, of the Rules of January 1, 1930, p. 126—must give way to Sec. 4 (b) of the Act of 1924 (8 U. S. C. A. [fol. 116] 204) which defines a non-quota immigrant as "an immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad," and Sec. 13 (a), (8 U. S. C. A. 213), which provides:

"No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa * * * and (4) is otherwise admissible under the immigration laws."

These aliens first came here and were legally admitted in 1909, and have had their domiciles here ever since. The evidence that their domiciles were and are here is emphatic

—there is none to the contrary. In 1923 they went to Greece, intending to return within six months, but the illness and death of the husband of Aspasia—the father of Antigone—and the settlement of his sizable estate caused them to remain in Greece longer than they had originally intended. After this their return was delayed for a long time by the refusal of the Consul to give them visas.

When these aliens left this country for Greece in 1923, they left a home here in New York City. It has been kept for them ever since. Continually during their absence they intended to return to this established home. This was more than a retention of domicile, as ruled by Swan, C. J. in United States ex rel. Lesto v. Day, C. C. A., 21 Fed. (2) 307. It was retaining an actual home, wherein the two sons of Aspasia and two brothers of Antigone were actually living and actually waiting for the home-coming of their mother and sister. This home was their true, fixed and permanent [fol. 117] home or principal establishment, to which they had an intention of returning, during their absence, as was ruled by Manton, C. J. in United States ex rel. Thomas v. Day, C. C. A., 29 Fed. (2) 485. Mere absence from a fixed home, however long continued, cannot work a change of domicile. To acquire a new domicile, two things are indispensable: residence in a new locality and the intention to remain there indefinitely. The change cannot be made except facto et animo. Both are necessary. Either without the other is insufficient. There must be the animus to change the prior domicile for another. Until the new one is acquired, the old one remains; Mitchell v. United States, 21 How. 350, 22 L. Ed. 584.

The relatrixes should have been admitted. Therefore they are discharged.

Done in court at Montpelier, this 22nd day of August, 1930.

— Harland B. Howe, Judge.

[File endorsement omitted.]

[fol. 118] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Nov. 21, 1930

To the Honorable Judge of the United States District Court for the District of Vermont:

Your petitioner respectfully shows to this Honorable Court that the relatrixes, Greek immigrants, arrived at the port of St. Albans, in said district, at ten A. M. on August 2nd, 1930, and applied for admission to the United States; that they were held for a Board of Special Inquiry; that hearing was held, and that afterward, on August 6th, 1930, at two P. M., the case was reopened for further consideration, and a decision of the Board was rendered to the effect that the relatrixes were not admissible to the United States, and proceeded to exclude both of them. This decision was affirmed by the Honorable Secretary of Labor at Washington.

That the respondent respectfully submits that the said Aspasia Polymeris and Antigone Polymeris, and each of them, were legally and lawfully detained by the respondent as aforesaid, and the respondent further says that the [fol. 119] order of deportation was a legal and valid order in accordance with the laws of the United States then in force.

Your petitioner further declares that, on the 13th day of August, 1930, the relatrixes filed a petition in this Honorable Court for a writ of habeas corpus; that, on the 14th day of August, 1930, such writ was issued; that, upon hearing having been held at Montpelier on the 22nd day of August, 1930, the relatrixes were discharged.

Wherefore, the said Joseph W. Trudell, being aggrieved by the decision of this Honorable Court in the premises, hereby makes application for an appeal therefrom to the Circuit Court of Appeals for the Second Circuit.

Joseph W. Trudell; Harry B. Amey, Attorney.

November 20, 1930.

[File endorsement omitted.]

[fol. 120] IN UNITED STATES DISTRICT COURT, DISTRICT OF VERMONT

In the Matter of the Application of ASPASIA POLYMERIS and ANTIGONE POLYMERIS for a Writ of Habeas Corpus vs. JOSEPH W. TRUDELL, Immigration Inspector in Charge, St. Albans, Vt.

ORDER ALLOWING APPEAL—Filed Nov. 21, 1930

On reading the petition of Joseph W. Trudell, Immigration Inspector-in-Charge, at St. Albans, Vermont, made by Harry B. Amey, his Attorney in this behalf and on behalf of the United States, dated November 20, 1930, for appeal and consideration of the assignment of errors presented herewith, it is

Ordered that the appeal be allowed as prayed for, and it is

Further ordered that a certified copy of the transcript of the record and all proceedings be transmitted to the Circuit Court of Appeals for the Second Circuit.

Dated November 21, 1930.

Harland B. Howe, United States District Judge.

[File endorsement omitted.]

[fol. 121] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Nov. 21, 1930

Now comes the respondent in the above-entitled cause and files the following assignment of errors upon which he will rely upon the prosecution of the appeal in the above-entitled cause from a decree made and entered herein by this Court on the 22nd day of August, A. D. 1930.

The Court has erred in sustaining the writ of habeas corpus and discharging the relatrixes for the following reasons:

1. Because the relatrixes were immigrants and had not complied with the provisions of law made for their entry into the United States.

2. Because they did not have properly visaed passports and had no right as returning immigrants to come into the United States without visaed passports or visas, according to law and according to the rules and regulations of the Department of Labor of the United States.

3. Because the relatrixes were not in possession of valid quota consular immigration visas.

Whereas, by law, the said writ of habeas corpus should have been dismissed and the aliens should have been re-
[fol. 122] manded to the custody of the immigration officers, the said Joseph W. Trudell, Immigration Inspector-in-Charge, by Harry B. Amey, his Attorney, prays that for the errors aforesaid and other errors in the record and proceedings the judgment and decision aforesaid made on the 22nd day of August, A. D. 1930, may be reversed and for naught held and esteemed and that the writ of habeas corpus herein be dismiss-d and the aliens remanded to the custody of the immigration officials for deportation.

Dated at Burlington, this 21st day of November, A. D. 1930.

Harry B. Amey, Attorney for the Respondent.

[File endorsement omitted.]

[fols. 123 & 124] Citation, in usual form, showing service on Harold Van Riper, omitted in printing.

[fol. 125] In United States District Court

[Title omitted]

Stipulation as to Record—Filed Nov. 21, 1930

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter.

Dated Nov. 21st, 1930.

Harold Van Riper, Attorney for the Relatrixes.
Harry B. Amey, Attorney for the Respondent.

[File endorsement omitted.]

[fol. 126] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 127] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex Rel. ASPASIA POLYMERIS and ANTIGONE POLYMERIS, Appellees (Relatrixes Below),

against

JOSEPH W. TRUDELL, Immigration Inspector in Charge, Appellant (Respondent Below)

Before L. Hand, Swan and Chase, Circuit Judges

OPINION

Appeal from an order of the District Court for the District of Vermont sustaining a writ of habeas corpus brought in behalf of two aliens who had been denied admission by the Immigration Inspector and discharging them from custody. Reversed.

The relators are two subjects of Greece who presented themselves for admission at St. Albans, Vt., on August 2, 1930, as aliens who had previously been lawfully admitted to this country and were returning from a temporary visit abroad. Aspasia Polymeris is the mother of Antigone Polymeris. They first entered the United States in 1909 and lived in New York City until September 1913, where Aspasia had, and has, two sons in business. They then returned to Greece for a visit and came back to this country [fol. 128] in 1914. From then on they lived in New York City, where Antigone was educated and later employed until they returned to Greece in 1923. They both were domiciled in New York from 1909 and the evidence is perfectly plain and convincing to the effect that neither of them has abandoned her domicile but has at all times since it was acquired intended to keep it and to make her permanent residence in this country.

They went to Greece in 1923 because the husband of Aspasia was sick at his home there at Volo. When they left,

they executed an affidavit showing their intention to return within six months. Before that period expired it became apparent that they needed to remain longer and Antigone wrote to the American Consul at Athens for an extension of time. He replied that "* * * your papers cannot be renewed for a stay longer than six months time unless you can furnish very good reasons for your longer delay." Although she testified that she replied to the consul's letter and complied with his requirement, there is no record of her reply ever having been received at the consulate and no return permit was ever issued to either of these aliens. The husband died in 1924. There was some delay in settling his estate and when the relators were ready to return to this country application was made to the consul by letter some time in 1924 for return permits. They were refused. In 1925, another such application was made and denied. In 1926, they employed a Greek lawyer in Athens to assist them and he was unsuccessful. In 1929, Antigone personally applied to the consul for return permits and was [fol. 129] refused. Her brothers in New York engaged a New York attorney who endeavored in vain to obtain return permits. In 1930, acting under the advice of this lawyer, who believed their cause would be advanced if they could present themselves for admission at the border, they obtained transit visas through Canada en route to Japan, landed at Montreal, came to St. Albans, and applied for admission. They were excluded because they had neither immigration visas nor return permits.

Harold Van Riper, Esq., for Appellees.

Harry B. Amey, Esq., United States Attorney, for Appellant.

CHASE, Circuit Judge:

The learned District Judge adopted the views expressed in the opinion of Keating v. Johnson, 17 Fed. (2d) 50 and discharged the aliens on the ground that they were entitled to admission as non-quota immigrants under Sec. 4 (b) of the Act of 1924 (8 U. S. C. A. 204) since they had previously been lawfully admitted to the United States and were returning from a temporary visit abroad. It is true that they had previously lawfully been admitted, had established their domicile here and were returning from a

visit abroad. Their visit had been somewhat extended first by the sickness and death of Aspasia's husband, by the necessity for remaining to settle his estate, and then by the delay occasioned by their persistent, though fruitless, attempts to obtain return permits. What is a temporary visit cannot be defined in terms of elapsed time alone when it is of such duration that its temporary character may reasonably be questioned. Then the intention of [fol. 130] the visitor, when it can be determined, will control. U. S. ex rel. Lesto v. Day, 21 Fed. (2d) 307. Ordinarily the intention must be, as said in the above case, "to return within a period relatively short, fixed by some early event." We think the relators have brought themselves well within the claimed status as immigrants once lawfully admitted who were returning from a temporary visit abroad. They always intended to come back as soon as they could. That depended upon the condition of health of Aspasia's husband and after he died upon the time required for them to remain to attend to the settlement of his estate. Surely this was all a matter of time which might be relatively short and with proof of an unrelinquished United States domicile of seven consecutive years satisfactory to the Secretary of Labor, gave him power to admit them in his discretion under 8 U. S. C. A. Sec. 136 (p). See Immigration Rules of January 1, 1930, Rule 13 (A). However, he has not admitted them and the issue now is whether they could enter of right with no return permits and no immigration visas.

Although we have great respect for the court which rendered the decision in Johnson v. Keating, supra, we cannot agree with that decision. Sec. 13 (a) of the Immigration Act of 1924, so far as pertinent to the present case, denies an immigrant admission to the United States unless he has an unexpired immigration visa.

Subdivision (b) of the same section is as follows:

[fol. 131] "(b). In such classes of cases and under such conditions as may be under regulations prescribed, immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa."

The 1930 regulations prescribed and applicable provide:

"Par. 2. An alien claiming to be a non-quota immigrant on the ground that he had been previously lawfully admitted to the United States and is returning from a temporary visit abroad shall not be admitted as such unless at the time of arrival he shall establish that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad, and presents an unexpired valid immigration visa duly issued by an American consular officer designating the holder as such: Provided, that the presentation of an unexpired valid permit to reenter, duly issued to the holder thereof pursuant to the provisions of Sec. 10 of the Immigration Act of 1924, shall be deemed to show prima facie that such holder is returning from a temporary visit abroad, and shall be accepted also in lieu of immigration visa."

Thus it appears that regardless of other requirements a returning alien cannot enter unless he has either an immigration visa or a return permit. If he has one or the [fol. 132] other he is not limited in the proof of his right to enter to the prima facie proof afforded by the visa or the permit but possession of one or the other of those two documents is an absolute condition upon his admission. See United States ex rel. Timpano v. Day, 21 Fed. (2d) 852.

It is true that Sec. 10 (f) of the Immigration Act of 1924 provides that:

"(f) A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning."

If read literally, this might be taken to nullify the regulation in so far as it provides that the return permit "shall be accepted also in lieu of immigration visa." But we think it plainly has to do only with the effect of the permit as evidence and not with its possession being made a condition for dispensing with the necessity for having an immigration visa if an alien can bring himself within the

regulations authorized by Sec. 13 (b) of the Act of 1924. U. S. ex rel. Timpano v. Day, supra.

It follows that these aliens were properly excluded under Sec. 13 (a) of the Immigration Act of 1924 since the Secretary of Labor did not admit them in his discretion under 8 U. S. C. A. Sec. 136 (p), and neither presented an unexpired valid immigration visa or an unexpired valid per-
[fols. 133 & 134] mit to re-enter in accordance with the regulations promulgated under Sec. 13 (b) of that Act.

Order reversed.

[fol. 135] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

UNITED STATES ex Rel. ASPASIA POLYMERIS and ANTIGONE POLYMERIS, Relatrixes, Appellees,

v.

JOSEPH W. TRUDELL, as Inspector, etc., Respondent-Appellant

JUDGMENT—Filed May 11, 1931

Appeal from the District Court of the United States for the District of Vermont

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Vermont and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, reversed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[File endorsement omitted.]

[fol. 136] [File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION FOR REHEARING—Filed May 15, 1931

Appellees respectfully petition for a rehearing in the above entitled matter for the following reasons:

This Honorable Court, the Court below and the Department of Labor itself all found that appellees when they presented themselves at St. Albans, Vermont, on August 2, 1930 were aliens who had previously been lawfully admitted to the United States, that they were returning from a temporary visit abroad, and that they never had done anything to impair their legal domicile in the United States, which facts give rise to the following propositions:

(a) Sec. 3 of the Immigration Act of February 5, 1917 (8 U. S. C. 136) contains all of the grounds upon which aliens may be excluded from the United States. Nothing in said section gives the Secretary of Labor the right to ex- [fol. 137] clude a lawfully domiciled alien returning from a temporary visit abroad, unless he is mentally or physically defective or is excludable for one of the other specific reasons therein set forth. The 7th proviso of said Sec. 2 (8 U. S. C. 136-p) merely gives the Secretary of Labor the right, in his discretion, to readmit an alien into the United States if mentally or physically defective, or otherwise excludable under said Sec. 3, providing the alien in question has an unrelinquished United States domicile of seven consecutive years or more.

(b) The Constitution of the United States applies to every lawful inhabitant thereof, citizen and alien alike. The only right possessed by a citizen, which is not possessed by an alien, is the right to vote. The right to reside in the place of one's lawful domicile is a vested right common to citizens and lawfully domiciled aliens. The fifth amendment to the Constitution guarantees to every inhabitant that he will not be deprived of his life, liberty or property without due process of law.

(c) The only lawful grounds upon which an alien can be removed from his lawful domicile in the United States are

those specified in Sec. 19 of the Immigration Act of February 5, 1917 (8 U. S. C. 155) and there is nothing in said section that would permit the President, the Secretary of Labor or any other official of the Government to divest a lawfully domiciled alien of his right to reside in the United States.

(d) We respectfully submit that there is no section of the law that permits the Secretary of Labor to exclude from admission a lawfully domiciled alien, and that even if there were, it would be unconstitutional and therefore a nullity.

(e) It is extremely doubtful as to whether or not Congress itself could pass a law divesting a friendly alien of his lawful residence in the United States, and if Congress could not do so, certainly the Secretary of Labor cannot lawfully do so by regulation or otherwise.

[fol. 138] For all of the above reasons we respectfully pray that our petition for a rehearing be granted.

In the event that this petition is denied, it is respectfully prayed that the mandate be stayed.

Harold Van Riper, Counsel for Appellant, 1 Broadway, New York, N. Y.

[fol. 139] In United States Circuit Court of Appeals

[Title omitted]

Before L. Hand, Swan, and Chase, Circuit Judges

Harold Van Riper for the Petitioner.

Decision on Petition for Rehearing—Filed May 19, 1931

Per Curiam:

Petition denied; mandate stayed in accordance with Rule 29 (3) of this court. Time to run from the filing of this order.

L. H., T. W. S., H. B. C., U. S. Circuit Judges.

[File endorsement omitted.]

[fol. 140] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

[Title omitted]

ORDER DENYING REHEARING—Filed May 27, 1931

A petition for a rehearing having been filed herein by counsel for the appellees,

Upon consideration thereof it is

Ordered that said petition be, and hereby is, denied.

Wm. Parkin, Clerk.

[fol. 141] [File endorsement omitted.]

[fol. 142] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 143] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 35,976. U. S. Circuit Court of Appeals, Second Circuit. Term No. 162. United States of America ex Rel. Aspasia Polymeris and Antigone Polymeris, petitioners, vs. Joseph W. Trudell, Immigration Inspector in Charge. Petition for a writ of certiorari and exhibit thereto. Filed June 13, 1931. File No. 35,976.

FILE COPY

JUN 13 1931

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 162

THE UNITED STATES OF AMERICA ex Rel. ASPASIA POLYMERIS and ANTIGONE POLYMERIS, Petitioners,

vs.

JOSEPH W. TRUDELL, Immigration Inspector in Charge.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HAROLD VAN RIPER,
Counsel for Petitioners.

(35,916)

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Sec. 10 (8 U. S. C., 210) 2, 21, 26
Sec. 13 (*a*) (U. S. C., 213) 2, 26
Sec. 13 (*b*) (U. S. C., 213) 2, 6, 13, 23

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. 162

UNITED STATES OF AMERICA ex REL. ASPASIA POLYMERIS AND ANTIGONE POLYMERIS, PETITIONERS,

vs.

JOSEPH W. TRUDELL, IMMIGRATION INSPECTOR IN CHARGE, RESPONDENT,

---

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petitioners, by their attorney, Harold Van Riper, respectfully pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit entered in the above-entitled case May 11, 1931.

Questions Presented.

1. Whether, in view of the provisions of Sec. 13 (*b*) of the Immigration Act of 1924 (8 U. S. C. 213), aliens previously, lawfully admitted into the United States for permanent residence therein, who have established a domicile therein, and whose status conforms in every particular with Sec. 4 (*h*) of said Act (8 U. S. C. 204), lawfully can be excluded by the Secretary of Labor from re-entering the United States and resuming their residence in their lawful places of domicile after a temporary visit abroad merely because at the time of seeking entry at a United States border port, they were not possessed of either a re-entry permit secured prior to departure under Sec. 10 of the Immigration Act of 1924 (8 U. S. C. 210) or the unexpired immigation visa mentioned in Sec. 13 (*a*) of said Act (8 U. S. C. 213).

2. Whether the Secretary of Labor can render null, void and inoperative a section of law, namely, Sec. 13 (*b*) of the Immigration Act of 1924 (8 U. S. C. 213-*b*) merely by ignoring same.

3. Whether or not under the Constitution of the United States a lawfully domiciled alien has the right to occupy, depart from and return to his domicile without let or hindrance.

Statement.

The petitioners, mother and daughter, entered the United States and were lawfully admitted for permanent residence in 1909, were abroad temporarily for

less than a year in 1913, and in 1923 again went abroad intending to remain less than six months, but were delayed in their return to their domicile in the United States by circumstances over which they had little or no control, and which we claim did not constitute a relinquishment of domicile, until they presented themselves for readmission at St. Albans, Vermont, on August 2, 1930.

A Board of Special Inquiry at St. Albans, Vermont, excluded them as being quota immigants not in possession of valid quota consular immigration visas (R. 84) and they appealed to the Secretary of Labor at Washington.

On August 12, 1930, the Secretary of Labor's Board of Appeal and Review prepared a long memorandum and upon the basis thereof the Secretary of Labor affirmed the excluding order of the Board of Special Inquiry. Said memorandum and order are not printed in the record on appeal herein and, therefore, are appended *in toto* to the brief herewith submitted in support hereof.

Thereafter a writ of *habeas corpus* was sued out, it was sustained on August 22, 1930, by Hon. Harland B. Howe, U. S. District Judge, with an opinion (R. 116) in which he said:

> "The evidence that their domiciles were and are here is emphatic—there is none to the contrary. In 1923 they went to Greece, intending to return within six months, but the illness and death of the husband of Aspasia—the father of Antigone—and the settlement of his sizable estate caused them to remain in Greece *longer*

than they had originally intended. *After this their return was delayed for a long time by the refusal of the Consul to give them visas.*" (Italics ours.)

On May 11, 1931, the United States Circuit Court of Appeals for the Second Circuit reversed the order of the United States District Court with an opinion in which it said:

> "We think the relators have brought themselves well within the claimed status as immigrants once lawfully admitted who were returning from a temporary visit abroad. They always intended to come back as soon as they could. That depended upon the condition of health of Aspasia's husband and after he died upon the time required for them to remain to attend to the settlement of his estate. Surely this was all a matter of time which might be relatively short and with proof of an unrelinquished United States domicile of seven consecutive years satisfactory to the Secretary of Labor, gave him power to admit them in his discretion under 8 U. S. C. A., Sec. 136 (*p*). See Immigration Rules of January 1, 1930, Rule 13 (A). However, he has not admitted them and the issue now is whether they could enter of right with no return permits and no immigration visas.
>
> Although we have great respect for the court which rendered the decision in Johnson *v.* Keating, *supra,* we cannot agree with that decision. Sec. 13 (*a*) of the Immigration Act of 1924, so far as pertinent to the present case, denies an immigrant admission to the United States unless he has an unexpired immigration visa.

Subdivision (*b*) of the same section is as follows:

'(*b*) In such classes of cases and under such conditions as may be under regulations prescribed, immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa.'

The 1930 regulations prescribed and applicable provide:

'Par. 2. An alien claiming to be a non-quota immigrant on the ground that he had been previously lawfully admitted to the United States abroad shall not be admitted as such unless at the time of arrival he shall establish that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad, presents an unexpired valid immigration visa duly issued by an American consular officer designating the holder as such: Provided, that the presentation of an unexpired valid permit to re-enter, duly issued to the holder thereof pursuant to the provisions of Sec. 10 of the Immigration Act of 1924, shall be deemed to show *prima facie* that such holder is returning from a temporary visit abroad, and shall be accepted also in lieu of immigration visa.'

Thus it appears that regardless of other requirements a returning alien cannot enter unless he has either an immigration visa or a return permit. If he has one or the other he is not limited in the proof of his right to enter to the *prima facie* proof afforded by the visa or the

permit but possession of one or the other of those two documents is an absolute condition upon his admission. See United States *ex rel.* Timpano *v.* Day, 21 Fed. (2d) 852."

Specification of Errors to be Urged.

The errors which the petitioners urge as ground for the granting of the writ of certiorari and for reversal of the judgment of the Circuit Court of Appeals for the Second Circuit are:

1. The Circuit Court of Appeals erred in reversing the order of the Trial Court.

2. The Court erred in holding that petitioners were not entitled under Sec. 13 (*b*) of the Act of 1924 (8 U. S. C. 213-*b*) to enter the United States without a visa or a re-entry permit.

3. The Court erred in holding that the 7th Proviso of Sec. 3 of the Immigration Act of February 5, 1917 (8 U. S. C. 136 P), gives the Secretary of Labor the right to exclude a lawfully domiciled alien, who is not excludable under any other provision of said Sec. 3, from re-entering the United States after a temporary visit abroad.

Reasons for Granting the Writ.

The decision of the Circuit Court of Appeals for the Second Circuit in the instant case is in conflict with the decision of the Circuit Court of Appeals for the First Circuit. In *Johnson* v. *Keating ex rel. Tarantino,* Dec. 31, 1926, 17 F. (2d) 50, which decision has been cited by the Second Circuit Court of Appeals itself as

good law as to immigrants of the returning resident class, as distinguished from non-immigrants, in the following cases:

Lesto v. *Day*, C. C. A. 2, Aug. 4, 1927, 21 F. (2d) 307 at 309;

London v. *Phelps*, C. C. A. 2, Nov. 1, 1927, 22 F. (2d) 288 at 290;

Graber v. *Karnuth*, C. C. A. 2, Jan. 7, 1929, 30 F. (2d) 242 at 243;

Natali v. *Day*, C. C. A. 2, Nov. 17, 1930, 45 F. (2d) 113-114;

by the Ninth Circuit Court of Appeals in

Kumanomido v. *Nagle*, 40 F. (2d) 42 at 44;

by U. S. District Courts in the following cases:

U. S. v. *One Airplane*, D. C. S. D. Cal., Dec. 23, 1927, 23 F. (2d) 500;

Von Steer v. *Day*, D. C. S. D. N. Y., July, 1928, unreported;

Serpico v. *Trudell*, D. C. Vt., Nov. 8, 1928, 46 F. (2d) 669;

Graber v. *Karnuth*, D. C. W. D. N. Y., Nov. 10, 1928, 29 F. (2d) 315;

and is taken issue with in only one case, other than the instant case, namely, Timpano *v.* Day, U. S. D. C., S. D. N. Y., Oct. 10, 1927, 21 F. (2d) 852.

The question involved in this case is one of Federal law, which has not been, but should be, settled by this Court.

WHEREFORE it is respectfully submitted that this petition for a writ of certiorari to review the judgment of

the Circuit Court of Appeals for the Second Circuit should be granted.

ASPASIA POLYMERIS AND
ANTIGONE POLYMERIS,
By HAROLD VAN RIPER,
Attorney for Petitioners,
1 *Broadway, New York, N. Y.*

June 1, 1931.

UNITED STATES OF AMERICA,
State and Southern District of New York, ss:

Harold Van Riper, being duly sworn, says that he is a member of the bar of the Supreme Court of the United States, is the attorney for the petitioners herein, and is duly authorized by said petitioners to make and execute this petition on their behalf; that he has read the foregoing petition and knows the contents thereof, and that the matters therein stated are true to the best of his knowledge, information, and belief. Deponent certifies that he has examined the foregoing petition and the record herein, and that in his opinion it is well founded, meritorious, and entitled to the favorable consideration of the Court.

HAROLD VAN RIPER.

Sworn to before me this 2nd day of June, 1931.
[SEAL.] EMANUEL WEITZER,
Notary Public.

N. Y. Co. Clerk No. 734, Reg. No. 2W466.
Kings Co. Clerk No. 242, Reg. No. 2288.
Term expires March 31, 1932.

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

The District Court sustained the writ of *habeas corpus* with an opinion (R. 115). The Circuit Court of Appeals reversed the District Court with an opinion, which is unreported and is appended to the record (R. 127).

Jurisdiction.

The judgment of the Circuit Court of Appeals for the Second Circuit was entered on May 11th, 1931 (R. 131).

The jurisdiction of this Court is conferred by Section 240 (*a*) of the Judicial Code as amended by the Act of February 13, 1925.

Statutes and Regulations Involved.

The applicable statutes and regulations are short and are quoted from time to time as references are made thereto.

Statement.

The petitioners are Aspasia and Antigone Polymeris, mother and daughter, respectively. At the time of their first arrival in the United States in 1909, the daughter was eight years of age and the mother forty-two (R. 19). They took up their residence in New

York City with their two sons and brothers, respectively. Aspasia first came here with her husband's permission (R. 78). In September, 1913, they left the United States temporarily for a visit to Greece and returned in October, 1914 (R. 25, 26 & 42). From 1909 until 1913, Antigone attended the public schools in New York City (R. 4, 31, 50 & 51). Afterward, she took a secretarial course and was employed from 1917 until 1923 as such in and about the city of New York (R. 52, 53 & 56). Aspasia has never had any employment in the United States. While here, her sons have always supported her (R. 40, 46 & 73). After their arrival in 1909, with the exception of a temporary visit to Aspasia's husband in 1913, they remained in New York until they went to Greece in August, 1923, on account of the illness of said husband of Aspasia.

The authorities do not question their lawful admission in 1909 and 1914, nor the fact that they maintained a residence here between 1909 and the time they left for Greece in 1923 (R. 9 & 10 and appendix hereto).

In departing from this country in 1923, the relatrixes claim that neither of them intended to abandon what they considered their home here, but that, in August, 1923, on account of the illness of Aspasia's husband, they went back to Greece to visit him.

Upon their departure, they filed an affidavit, stating their ages to be fifty-six and twenty-four years, respectively, that they had resided in the United States since 1916, that their present address was 46 West 66th Street, New York, N. Y., that they were temporarily leaving the United States from the port of New York on the S. S. President Wilson, sailing August 23, 1923,

for the purpose of visiting relatives temporarily, that they intended to return to the United States within six months to their son and brother, Constantine Polymeris, at 46 West 66th Street, an American citizen, engaged in the restaurant business at 242 West 145th Street, New York, and were in possession of a return, prepaid ticket (R. 111).

Aspasia's husband, Margariti, possessed quite an amount of property in and around Volo, which is about twenty hours' distant from Athens, Greece, consisting of orchards, vineyards, a tannery, and other real estate. A short time prior to their departure, Aspasia's husband was hit over the head by a robber and seriously injured.

Shortly after their arrival at Volo, Margariti became worse and finally died in February, 1924 (R. 37 & 67), and they remained in Greece for the sole purpose of selling the property and settling the estate. Until 1926, they lived in the town of Volo near which the property is situated and then moved to Athens (R. 75, 76, 80). They continued to live in Athens until the time of their departure for Canada in 1930.

It seems, however, that this property was rented out on a percentage, that the daughter did nothing while in Greece, that both received money from Aspasia's sons in New York City, and that they did not get any net results from the property (R. 75 & 76). The property was placed in the hands of a real estate agent to sell but that they could not dispose of it on account of insufficient price (R. 77). The value of the property is said to be from 800,000 to 900,000 drachmas.

The record shows that as early as January, 1924, five months after their departure from the United States, realizing that the serious illness of Mr. Polymeris would somewhat protract their stay abroad, Antigone wrote the American Consul at Athens asking what should be done to preserve their right to return to the United States (R. 27) and received his reply dated January 10, 1924 (R. 89). A month later the father died leaving a sizable estate requiring attention and Antigone again wrote the Consul and he replied to the effect that they would have to call personally at the consulate (R. 29). Finally in 1925, having arranged matters so that they could return to the United States, Antigone wrote the Consul asking for the issuance of a non-quota visa. He refused to issue same on the ground that they had been too long absent from the United States (R. 29), although at that time the absence had been only of about eighteen months' duration.

Immediately upon their arrival at Athens from Volo in 1926 they employed a lawyer named J. S. Tsatsonis to assist them in securing visas, but his efforts were without avail (R. 30).

Through the American citizen sons of Aspasia they retained New York counsel in 1928 (R. 30) after they had exhausted long and strenuous efforts in Greece. The only thing the Consul appears to have any record of is his letter to the aliens dated January 10, 1924, a copy of which was called to his attention and sent to him by the aliens' New York attorney with his letter dated February 22, 1929 (R. 92), which resulted in the appearance of the aliens at the consulate on March

13, 1929, and which was accompanied by the carefully prepared affidavits of Gus and Polimeros Polymeris, the two American citizen sons of Aspasia (R. 106-110), Aspasia and Antigone's Affidavit of Departure (R. 111), document showing extent of Aspasia's deceased husband's estate (R. 86-88), and said letter of American Consul dated January 10, 1924 (R. 89).

Under date of March 20, 1929, the American Consul General replied to said letter (R. 90).

Subsequently said attorney wrote the Secretary of State under date of July 22, 1929 (R. 94), the Secretary of State replied thereto under date of August 3, 1929 (R. 98), said attorney again wrote the Secretary of State under date of August 14, 1929 (R. 101) and the Secretary of State replied thereto under date of August 19, 1929 (R. 104).

Such efforts having proved unavailing, the aliens made their way to Montreal and from there journeyed to the Immigration Border Port of St. Albans, Vermont, on August 2, 1930, and went before a Board of Special Inquiry there for the purpose of asserting their right to re-enter the United States as returning residents under Sections 4-B and 13-B of the Immigration Act of 1924 (8 U. S. C. 204-213).

They were given hearings on August 2nd, 1930 (R. 24) and on August 6, 1930 (R. 50), were excluded as quota immigrants not in possession of valid quota consular immigration visas (R. 84), and appealed to the Secretary of Labor at Washington.

On August 12, 1930, the Secretary of Labor's Board of Appeal and Review prepared a long memorandum, and upon the basis thereof the Secretary of Labor af-

firmed the excluding order of the Board of Special Inquiry. Said memorandum and order are not printed in the record on appeal herein and therefore are appended hereto *in toto*.

Thereafter a writ of *habeas corpus* was sued out, it was sustained on August 22, 1930, by Honorable Harland B. Howe, U. S. District Judge, with an opinion (R. 115), and subsequently an appeal was taken to the Circuit Court of Appeals, Second Circuit.

ARGUMENT.

POINT I.

Relatrixes were domiciled residents of the United States and entitled to re-enter under Section 13(b) without non-quota immigration visas or re-entry permits.

In his said decision of August 12th (appended hereto) the Secretary gives his reasons therefor, wherefore this Honorable Court has the right to consider whether the same meet with the requirements of the Act. Gegiow *v.* Uhl, 239 U. S. 3-9, holds:

> "The courts are not forbidden by the statute to consider whether the reasons, when they are given, agree with the requirements of the Act. The statute, by enumerating the conditions upon which the allowance to land may be denied, prohibits the denial in other cases. And when the record shows that a commissioner of immigration is exceeding his power, the alien may demand his release upon *habeas corpus*."

In the case at bar the Secretary on the first page of his decision finds as a fact that both aliens were lawful

residents of the United States from 1909 to 1923, which makes unnecessary a consideration of their activities during said period, except the fact that after their absence in Greece for a year from 1913 to 1914 they returned to New York as their place of domicile, which makes it reasonable to believe that they would have done likewise early in 1924 had not the father died. This narrows the case down to the question as to whether or not since 1923 they have relinquished said residence and domicile, and as to whether or not they now are excludable because they were not in possession of unexpired immigration visas at the time of their arrival at St. Albans on August 2nd, 1930.

On page two he makes a finding to the effect that the aliens made no attempt to secure visas until March, 1929, which is directly contrary to the sworn testimony of both aliens, allegedly basing said finding upon the consular records, which admittedly were not before him, but in reality basing it upon the unsworn statement contained in the Consul's letter of March 20, 1929, to relators' attorney (R. 90), which at most says he has no record of their efforts to secure visas.

Also on page two, the Secretary himself narrows the case down to the two issues mentioned above.

On the third page he quotes paragraph two of subdivision I of Rule 3 of the Immigration Rules of January 1, 1930, and in the following paragraph attempts to show that unless the aliens fall within the provisions of said rule they must be excluded. This is an erroneous construction of the law.

On May 10, 1926, Judge Thacher, S. D. N. Y., in U. S. *ex rel.* Patti *v.* Curran, 22 F. (2d) 314, wherein

the aliens were absent for one year and twenty days, and arrived possessed of re-entry permits which had expired, said:

> "Such a result obviously exalts form above substance, and gives to regulations intended to effectuate the intention of the statute an effect which defeats its purpose. This seems clear from the general purpose of section 13, which deals, not with qualifications for admission, but with the requisite evidence of such qualifications. This being its purpose, the broadest discretion is granted to the Secretary to dispense with procedural form when substantive right cannot otherwise be served (section 13 [b] and [d])."

Thereafter, on December 31, 1926, affirming the Court below, the U. S. Circuit Court of Appeals, First Circuit, in Johnson *v.* Keating, 17 F. (2d) 50, wherein after an absence of nine months an alien resident arrived at Providence without either a re-entry permit or a non-quota visa, at page 51 said:

> "(1, 2) The narrow question is whether, without an immigration visa or a return permit, he is entitled to admission. His rights depend upon the proper interpretation of the applicable provisions of the Immigration Act, *supra*. It is a question of law, reviewable on *habeas corpus*. Gegiow *v.* Uhl, 239 U. S. 3, 36 S. Ct. 2, 60 L. Ed. 114. Concededly, he is a non-quota alien under section 4 (*b*) being Comp. St. § 4289-3/4 *b*. * * *
>
> (3) But we need not rest our decision on the inconsistency of the regulations. We go farther.

Congress never delegated to immigration officials authority to make a regulation which cuts down substantially the rights given by the act itself. It is probable, perhaps certain, that Congress could not delegate such substantive legislative power. See Field *v.* Clark, 143 U. S. 649, 694, 12 S. Ct. 495, 36 L. Ed. 294.

The language in section 13 (*b*), that such non-quota immigrant may be let in 'under such conditions as may be by regulations prescribed', does not give authority to prescribe regulations which do not operate 'for the enforcement of the provisions of this act' (section 24) but operate to enlarge the excluding features of the act. Without further elaboration, we regard it as inconceivable that, if Congress had intended to make the rights of such returning aliens entirely dependent upon possession of a return permit or an immigration visa, it would not have said so in unmistakable terms.

A non-quota immigrant like Tarantino is entitled to come in, if he establishes his statutory status by any reasonable method. Williamson *v.* United States, 207 U. S. 425, 461, 462, 28 S. Ct. 163, 52 L. Ed. 278. Otherwise put, *a regulation which undertakes to exclude all evidence of non-quota status, except a return permit or an immigration visa, is unreasonable, inconsistent with the general import of the act, and therefore void.*" (Italics ours.)

Thereafter on April 29, 1927, in what appears to be an effort to circumvent both of said decisions, the Secretary promulgated General Order No. 87 which now

appears as Par. 2, Sub. I, Rule 3, Rules of January 1, 1930, and reads as follows:

> "An alien claiming to be a non-quota immigrant on the ground that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad shall not be admitted as such unless at time of arrival he shall establish that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad, and presents an unexpired valid immigration visa duly issued by an American consular officer designating the holder as such: Provided, That the presentation of an unexpired valid permit to reenter, duly issued to the holder thereof pursuant to the provisions of section 10 of the immigration act of 1924, shall be deemed to show *prima facie* that such holder is returning from a temporary visit abroad, and shall be accepted also in lieu of immigration visa. * * *"

It is to be noted that the former Paragraphs 2 and 5, which Judge Anderson held to be "plain and reasonable regulations" and within the power of the Secretary to promulgate under the Act, have been eliminated, and that the only real difference between the new rule and the one quoted and referred to by Judge Anderson on page 52 as inconsistent and an improper exercise of authority, is that it requires the alien to present as the only substitute for a non-quota immigration visa, an *"unexpired valid permit to re-enter"* instead of merely a permit issued "in accordance with the provisions of section 10 of the Act," the Government's stumbling block in the Patti case, *supra.*

If Johnson *v.* Keating is sound, and we respectfully submit that it is, the new rule is unlawful because it attempts to render nugatory the express provisions, purpose and intent of section 13 (*b*) of the Act by ignoring same.

Johnson *v.* Keating has been cited by the Second Circuit Court of Appeals itself as good law as to immigrants of the returning resident class, as distinguished from non-immigrants, in the following cases:

Lesto *v.* Day, C. C. A. 2, Aug. 4, 1927, 21 F. (2d) 307 at 309;

London *v.* Phelps, C. C. A. 2, Nov. 1, 1927, 22 F. (2d) 288 at 290;

Graber *v.* Karnuth, C. C. A. 2, Jan. 7, 1929, 30 F. (2d) 242 at 243;

Natali *v.* Day, C. C. A. 2, Nov. 17, 1930, 45 F. (2d) 113-114;

by the Ninth Circuit Court of Appeals in

Kumanomido *v.* Nagle, 40 F. (2d) 42 at 44;

by U. S. District Courts in the following cases:

U. S. *v.* One Airplane, D. C. S. D. Cal., Dec. 23, 1927, 23 F. (2d) 500;

Von Steer *v.* Day, D. C. S. D. N. Y., July, 1928, unreported;

Serpico *v.* Trudell, D. C. Vt., Nov. 8, 1928, 46 F. (2d) 669;

Graber *v.* Karnuth, D. C. W. D. N. Y., Nov. 16, 1928, 29 F. (2d) 315;

and is taken issue with in only one case, namely Timpano *v.* Day, U. S. D. C., S. D. N. Y., Oct. 10, 1927, 21 F. (2d) 852, in which Judge Thacher said at page 854:

> "With great deference to the opinion of the Court in Johnson *v.* Keating, *supra,* I find myself unable to concur in the decision in that case, and cannot escape the conclusion that the Regulations here in question were authorized by section 13 (*b*) of the Act of 1924."

It is to be noted that the Timpano case has never been cited in any of the later decisions, and that while on appeal it was withdrawn at the suggestion of the Secretary and the relator was admitted.

On page 4 of his decision the Secretary cites first and foremost the Timpano case, then the Patti case, Johnson *v.* Keating and Serpico *v.* Trudell, all of which have been referred to herein. In the last named case Serpico was abroad studying for eleven years and was admitted without a visa or a re-entry permit after *habeas corpus* proceedings.

He then proceeds to discuss the absence as having been of seven years duration, but fails to consider that the aliens evidenced their intention to return within a short period by the affidavit executed before their departure, by their retention of their bank accounts, by their continuing intent to return to the domicile from which they had temporarily departed, the home of the sons, and by their constant efforts by correspondence, by attorneys and by personal application to secure non-quota visas. They never could have secured re-entry permits because they departed before the present act became effective.

He then cites Lesto *v.* Day, 21 F. (2d) 307, and quotes a portion of it, but fails to quote that portion which shows that Lesto came back to the United States as

a visitor before his attempted re-entry as a resident and secured a re-entry permit by fraud, and that the case throughout did not ring true. The Lesto case cites U. S. *ex rel.* Randazzo *v.* Tod, C. C. A. 2, 297 F. 214, and U. S. *ex rel.* Devenuto *v.* Curran, C. C. A. 2, 299 F. 206, both relating to illiterates, as limiting a temporary absence to six months. However, the first proviso of Section 3 of the Act of Feb. 5, 1917 (8 U. S. C. 136—"o") provides that aliens who have lawfully resided in the United States for five years are exempted from the illiteracy test if returning within six months from an absence abroad, and the seventh proviso of said section (8 U. S. C. 136—"p") permits the readmission of illiterate aliens to unrelinquished domiciles of seven years or more, irrespective of the length of their absences. Incidentally, Section 10 of the 1924 Act (8 U. S. C. 210), providing for the issuance of re-entry permits, calls for one year periods with extensions for additional periods of six months each. Said case finally says of "temporary visit":

> "Without attempting to complete definition of 'a temporary visit,' we may say that we think the *intention* of the departing immigrant must be to return within a period relatively short, fixed by some early event." (Italics ours.)

And in the case at bar we meet this condition in the execution of the affidavit of departure (R. 111) and subsequent events.

He next cites Thomas *v.* Day, 29 F. (2d) 485, C. C. A. 2, Dec. 3, 1928, but fails to quote the portion from which it plainly appears that the court felt that the

aliens had secured their visas by fraud, and had foreclosed themselves from claiming resident status by entering as visitors in 1928. In addition, their original stay, upon which they sought to predicate a claim of residence, was only of about seven months duration. It likewise cites the illiteracy case of Devenuto *v.* Curran and the Lesto case, *supra,* and another illiteracy case, McKusick *ex rel.* Pattavina *v.* Johnson, C. C. A. 1, Dec. 5, 1924, 3 F. (2d) 398. Said opinion states:

> "Under these facts, the appellants have not established a domicile within the United States for they had no true fixed and permanent home or principal establishment to which they had an intention of returning whenever absent. No person is without a domicile and he can have but one at a time. U. S. *ex rel.* De Venuto *v.* Curran, *supra.*"

In the case at bar the aliens certainly did establish their domicile in the United States in 1909, they returned to it in 1914 after a short absence, they intended to return to it when they left in 1923 and were delayed by circumstances over which they had little or no control.

The De Venuto case, *supra,* is interesting in that it contains a complete résumé of the law and decisions on domicile and residence.

In the case at bar the testimony shows that the wife and daughter established their domicile in the United States with the express consent and under the direction of the husband, and that, in fact, he intended to join them here, which intention was not carried out because of his death (R. 61).

Point II.

The decision below is without basis in law.

The relatrixes' departure from the United States took place prior to the Act of 1924, when there was no provision of law for the issuance or extension of "return permit," they had no "return permit" and they did not attempt to enter with a "return permit" or a non-quota visa but did, on the contrary, seek to enter at St. Albans, Vermont, without either of said documents under the express provisions of Section 13 (*b*) of the Act of 1924 (8 U. S. C. 213), a matter under the jurisdiction of the Labor Department and not of the State Department.

The Court below said:

> "We think the relators have brought themselves well within the claimed status as immigrants once lawfully admitted who were returning from a temporary visit abroad. They always intended to come back as soon as they could. That depended upon the condition of health of Aspasia's husband and after he died upon the time required for them to remain to attend to the settlement of his estate. Surely this was all a matter of time which might be relatively short and with proof of an unrelinquished United States domicile of seven consecutive years satisfactory to the Secretary of Labor, gave him power to admit them in his discretion under 8 U. S. C. A., Sec. 136 (*p*). See Immigration Rules of January 1, 1930, Rule 13 (A). However, he has not admitted them and

the issue now is whether they could enter of right with no return permits and no immigration visas.

Although we have great respect for the court which rendered the decision in Johnson *v.* Keating, *supra,* we cannot agree with that decision. Sec. 13 (*a*) of the Immigration Act of 1924, so far as pertinent to the present case, denies an immigrant admission to the United States unless he has an unexpired immigration visa.

Subdivision (*b*) of the same section is as follows:

'(*b*) In such classes of cases and under such conditions as may be under regulations prescribed, immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa.'

The 1930 regulations prescribed and applicable provide:

'Par. 2. An alien claiming to be a non-quota immigrant on the ground that he had been previously lawfully admitted to the United States abroad shall not be admitted as such unless at the time of arrival he shall establish that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad, presents an unexpired valid immigration visa duly issued by an American consular officer designating the holder as such: Provided, that the presentation of an unexpired valid [illegible] mit to re-enter, duly issued to the holder th[illegible] pursuant to the provisions of Sec. 10 of the [illegible]

migration Act of 1924, shall be deemed to show *prima facie* that such holder is returning from a temporary visit abroad, and shall be accepted also in lieu of immigration visa.'

Thus it appears that regardless of other requirements a returning alien cannot enter unless he has either an immigration visa or a return permit. If he has one or the other he is not limited in the proof of his right to enter to the *prima facie* proof afforded by the visa or the permit but possession of one or the other of those two documents is an absolute condition upon his admission. See United States *ex rel.* Timpano *v.* Day, 21 Fed. (2d) 852.''

An examination of the whole of Sec. 3 of the Immigration Act of February 5, 1917 (8 U. S. C. 136), however, will show that it contains all of the grounds upon which aliens may be excluded from entry into the United States, that the 7th Proviso of said Section (8 U. S. C. 136-P) is designed merely to permit the Secretary of Labor to overlook the grounds for exclusion in the cases of aliens whose domicile has been of seven or more years' duration, and nothing in said section gives him the power to exclude a lawfully domiciled alien unless he is excludable for some one or more of the reasons set forth in said section.

In the case at bar, however, the Second Circuit Court of Appeals seems to hold that the Secretary of Labor can exclude from readmission any lawfully domiciled alien even though none of the reasons specified in said Section 3 exist in the particular case, which

holding, we respectfully submit, is without basis in law.

It is to be noted that paragraph 2 of Subdivision "I" of Rule 3 of the Immigration Rules of January 1, 1930, quoted above, provides for the readmission of lawfully domiciled aliens under Sec. 13-A of the Immigration Act of 1924 (8 U. S. C. 213-A) when possessed of an unexpired valid immigration visa, and, without a visa, only when in possession of an unexpired valid permit to reenter issued under Sec. 10 of said Act (8 U. S. C. 210). We respectfully submit that said Sec. 10 provides one separate and distinct means whereby a resident alien may depart from and return to the United States without a visa and is complete in itself. Section 13 (*a*) provides for the readmission of resident aliens possessed of unexpired immigration visas if they are "otherwise admissible under the immigration laws," *i. e.*, not excludable under Sec. 3 of the Act of 1917, and is also complete in itself. Sec. 13 (*b*) clearly provides for the admission of returning residents who for one reason or another possess neither a permit to reenter nor an immigration visa. It will be seen, therefore, that while in his regulation the Secretary has given effect to two of the provisions for the re-entry of resident aliens, he has nevertheless absolutely ignored the third provision, *i. e.*, that contained in Sec. 13 (*b*). Certainly if Congress intended the re-entry permit as the only substitute for an immigration visa, Sec. 10 being complete in itself, there would have been no need for the enactment of Sec. 13 (*b*).

The case of Timpano *vs.* Day cited by the Circuit Court is a District Court decision and while the case was on appeal to the Circuit Court, upon the suggestion of the Secretary of Labor, the appeal was withdrawn and the Secretary admitted the alien as a returning resident without an unexpired visa or re-entry permit.

The unsworn statement in the Consul's letter of March 20, 1929 (R. 90), to the effect that subsequent to his letter of January 10, 1924, there is no record of any efforts on the part of the aliens until March 13, 1929, was merely offered into evidence to show that we had continued our efforts. The mere fact that he claims to have no record is not evidence that they did not exert the efforts testified to, U. S. *ex rel.* Linklater *vs.* Commissioner, 36 F. (2d) 239; U. S. *ex rel.* Shore *vs.* Day, 36 F. (2d) 264; Brader *vs.* Zurbrick, 38 F. (2d) 472; and it scarcely is to be believed that these aliens through their brothers would have retained New York counsel in 1928 until after they had exhausted long and strenuous efforts in Greece.

POINT III.

Relatrixes had unrelinquished domiciles in the United States, they were exempted from the necessity of having non-quota visas or re-entry permits, there was no substantial evidence to sustain the findings of the immigration authorities, and the decision of the District Court should be affirmed.

HAROLD VAN RIPER,
Attorney for Relatrixes,
1 *Broadway, New York City.*

APPENDIX.

55733/673. Montreal. August 12, 1930.

In re ASPASIA POLYMERIS and ANTIGONE POLYMERIS (Daughter).

This record relates to a 26-year-old single female, and her 60-year-old mother, natives of Greece, of Greek race, who applied for admission at the port of St. Albans on August 2, 1930. The younger alien is literate, the mother is unable to read. Both have been in the United States from 1909 to 1923, and are now destined to two brothers and sons living in New York City. The present Greek passports valid for travel to Europe and Japan, issued on January 14, 1930, bearing French visa dated January 15, 1930, at Athens, bearing visa for the United Kingdom and Canada, dated January 15, 1930, but they do not bear a United States Consular immigration visa.

Excluded as quota immigrants not in possession of immigration visaes.

Attorney Harold Van Riper, 1 Broadway, New York City, interested.

Both aliens first arrived in the United States in 1909 and resided in this country until August 23, 1923, with the exception of one year's visit to Greece in 1913. Based upon their prior residence in this country, the aliens claim admission as non quota immigrants under Section 4 (*b*) of the Act of 1924, as aliens previously lawfully admitted to the United States, returning from a temporary visit abroad.

The statement is candidly made that they were refused visaes by the American Consul abroad, and that, pursuant to instructions received from the brothers and sons in this country, apparently on the advice of an attorney, they obtained passports valid for Europe

and Japan, as in transit to Japan, and procured Canadian in transit visaes, allowing them to pass through Canada on their way to Japan. It is also frankly admitted that they had no intention of proceeding to Japan, but that their purpose in going to Canada was to enable them to apply for admission to the United States and that, although they had no intention of proceeding to Japan, they falsely told the Canadian Immigrant inspector that it was their purpose to do so.

As proof of their status of returning residents the aliens testified that when they left the United States it was their intention to return within a period of six months, but because of the death of the father and husband (who had never been in the United States) in February, 1924, resulting in the inheritance of some real property which had to be sold, their stay was necessarily prolonged for a longer period than expected. It is shown by the record that prior to the death of the father inquiry was made by letter of the American Consul for extension of their stay abroad, which received appropriate response, that if the extension was requested because of illness, a doctor's certificate would be required; or, if made because of personal business, a full report of the circumstances which required a stay would have to be presented to the consulate.

It is further shown by the consular records that no attempt was made by the aliens to apply to the American Consul for visaes to return until March of the year 1929. No disposition has as yet been made of the real property left by the father and husband.

With the recital of these facts it will be seen that the two issues which the case presents are, whether the aliens have established their non quota status as immigrants previously lawfully admitted, returning from a *temporary* visit abroad, and whether, if they

have, they may be admitted notwithstanding the fact that they are not in possession of non quota immigration visaes.

By the enactment of the Immigration Law of 1924, Congress has directed that no immigrant shall be permitted to enter the United States unless he has an unexpired immigration visa. However, this requirement, in so far as it affects immigrants returning from a *temporary* visit abroad, may be dispensed with in accordance and under conditions prescribed by regulations. These regulations are:

> "An alien claiming to be a non quota immigrant on the ground that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad shall not be admitted as such unless at time of arrival he shall establish that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad, and presents an unexpired valid immigration visa duly issued by an American consular officer designating the holder as such: Provided, That the presentation of an unexpired valid permit to reenter, duly issued to the holder thereof pursuant to the provisions of section 10 of the immigration act of 1924, shall be deemed to show *prima facie* that such holder is returning from a temporary visit abroad, and shall be accepted also in lieu of immigration visa: And *further provided*, That any alien who establishes that he has been previously lawfully admitted to the United States and is returning from a temporary visit of not more than six months to Canada, Newfoundland, St. Pierre, Miquelon, Bermuda, Mexico, Cuba, and other islands included in the Bahama and

> Greater Antilles groups shall be permitted to enter the United States without a passport, an immigration visa, or permit to reenter." (Rule 3, subdivision *i*, par. 2.)

Unless therefore the aliens can bring themselves within the conditions which have been prescribed by the regulations for dispensing with an immigration visa, their admission is prohibited, not by regulations, but by the statute itself because they have no immigration visa. The condition now imposed by the regulations for dispensing with an immigration visa in such case as this is the possession of an unexpired permit to return. (See U. S. *ex rel* Timpano *vs.* Day, 21 Fed. (2) 852, D. C., S. D. of New York; Cf. Patti *vs.* Curran, 22 Fed. (2) 314, Johnson *vs.* Keating, 15 Fed. (2) 50, and Serpico *vs.* Trudell, decided by the U. S. District Court for the District of Vermont on November 8, 1928, relating to the same question prior to the amendment of the rule quoted.) The aliens have no immigration visaes nor permits and are therefore prohibited from entry.

It is also found that the aliens are not non quota immigrants as defined by the Act of 1924. Retention of domicile with its intention to return is insufficient to establish such status. The requirement is that the aliens must be returning from a *temporary visit abroad.* To hold that a seven years' absence in the country of nativity of the aliens is a temporary absence is to give to the phrase the meaning which it does not possess and which the United States Circuit Court for the Second Circuit has very definitely ruled must be defined as a short absence, its termination limited and fixed by some event. To illustrate, in the case of U. S. *ex rel.* Lesto *vs.* Day, 21 Fed. (2) 307, dealing with a family applying for admission as returning residents, the father being in possession of a

reentry permit, and the wife and children in possession of non quota immigration visaes, after an absence in the country of their nativity of five years, Judge Swan speaking for the Court said:

> "The wife and daughter had been away almost five years. The husband had been away more than two years before he came back as a temporary visitor, and more than four years before he applied for permanent readmission. During all this period he had no business nor place of habitation in this country. The word 'temporary' in the phrase 'returning from a temporary visit abroad' means more than the mere intention of domicile, that is, an intention to keep the United States as a home to which one will ultimately return. This follows from Section 10 of the Immigration Act of 1924, prescribing the issuance of permits for temporary absence. The applicant must state the length of his intended absence and the reasons therefor. The permit shall not be valid for more than one year, though there is a provision for extension from time to time for a period of six months for good cause shown. While at the present time there is no immigration rule defining a temporary visit abroad, the suggested construction is corroborated by the practice of the Department under former Acts in adopting a rule limiting a temporary visit to an absence of six months' duration. Such a rule was sustained as reasonable. See United States *ex rel.* Randazzo *vs.* Tod, 297 Fed. 214 (C. C. A. 2); United States *ex rel.* Devenuto *vs.* Curran, 299 Fed. 206 (C. C. A. 2). We cannot agree, therefore, with the opinion of the learned judge from whose order this appeal is taken, that retention

> of domicile is alone sufficient to establish that the relators are non-quota immigrants. Without attempting to complete definition of 'a temporary visit,' we may say that we think the intention of the departing immigrant must be to return within a period relatively short, fixed by some early event."

Again, in the case of Soas, U. S. *ex rel.* Thomas *vs.* Day, 29 Fed. (2) 485, a case which came before the United States Circuit Court of Appeals for the 2nd Circuit, the same question was involved. The aliens in that case, a man and his wife, originally came to the United States in 1924 to join their children. After a short stay in this country they went back to their home in Jamaica where they were real property owners. They returned to the United States to their daughter's wedding in June, 1926, on a temporary visit, as non immigrants, but went back to Jamaica to sell their real estate and with the intention of returning to the United States for the purpose of taking up their permanent residence in this country with their children. While they bought bedroom furniture and used it for their own purposes, they left it with the daughter when they returned to Jamaica. They did not succeed in selling their real property in Jamaica, and returned to the United States in October, 1928, and claimed admission at that time as non quota immigrants on the basis that they were previously lawfully admitted, and were returning from a temporary visit abroad. Judge Manton, who wrote the opinion affirming the dismissal of the writ sued out in behalf of the aliens, said:

> "With the burden resting on the appellants by virtue of Sec. 23 of the Immigration Act of 1924, they have failed to establish that they are entitled to admission as returning from a tem-

porary visit abroad. They were absent, since 1924, one year and three months before they came in June, 1925, and again one year and five months after leaving in 1927, and before they arrived on October 11, 1928. This was beyond the six months' period of absence referred to by the departmental rule: U. S. *ex rel.* DeVenuto *vs.* Curran, 299 Fed. 206; Mackusick *ex rel.* Pattavina *vs.* Johnson, 3 Fed. (2) 398; U. S. *ex rel.* Lesto *vs.* Day, 21 Fed. (2) 307. Under these facts, the appellants have not established a domicile within the United States for they had no true fixed and permanent home or principal establishment to which they had an intention of returning whenever absent. No person is without a domicile and he can have but one at a time. U. S. *ex rel.* DeVenuto *vs.* Curran, *supra.* The record justified the Board of Inquiry and sustains the District Court in its findings against the appellants."

On the facts recited, the section of law involved, and the authority cited, there must be an affirmance of the order of exclusion on the ground that the aliens are not non quota immigrants under Section 4 (*b*) of the Act of 1924, in that they are not returning to the United States from a *temporary* absence abroad.

It is recommended that the excluding decision of the Board be affirmed.

Chairman, Secy. & Comr.,
Genls. Board of Review.

JS:LLB.

So ordered:

———,
Assistant to the Secretary.

(785)

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CHARLES ELMORE CR

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 162.

UNITED STATES *ex rel.* ASPASIA POLYMERIS and ANTIGONE POLYMERIS,

Petitioner,

v.

JOSEPH W. TRUDELL, Immigration Inspector in Charge.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONERS.

HAROLD VAN RIPER,
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New York.

THE BALLOU PRESS NEW YORK

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONERS.

Petitioners desire to rely upon the brief submitted with their petition for writ of certiorari and to submit this as a supplement thereto.

Section 4 of the Immigration Act of 1924 (8 U. S. C. 4) provides:

> "When used in this Act the term 'non-quota immigrant' means—
>
> (a) an immigrant previously lawfully admitted to the United States who is returning from a temporary visit abroad;"

This can refer only to an alien who was lawfully admitted for permanent residence, who thereafter established and maintained a domicile in the United States, and who at no time has by intent or otherwise relinquished that domicile.

The decision of the Secretary of Labor is printed in full as an appendix to the petition and brief at page 28 thereof. After reciting and not questioning the facts of the case, it goes on to say at page 31:

> (a) "It is also found that the aliens are not non-quota immigrants as defined by the Act of 1924. *Retention of domicile with its intention to return is insufficient to establish such status.*" (Italics ours.)

This obviously is a mistaken conception of the law of domicile (*Mitchell* vs. *U. S.*, 21 How. 350, 22 L. Ed. 584), and both of the courts below so held herein.

Also on page 31 it says:

> (b) "The condition now imposed by the regulations for dispensing with an immigration visa in such case as this is the possession of an unexpired permit to return. * * * The aliens have no immigration visas nor permits and are therefore prohibited from entry."

This conclusion is not legally sound if the First Circuit's decision in *Johnson* vs. *Keating ex rel. Tarantino*, 17 F. (2d) 50, is good law.

The two questions above mentioned are the only ones arising in the case at bar, they both raise propositions of law and, therefore, are properly subject to review by the courts (*Gegiow* vs. *Uhl*, 239 U. S. 3-9).

In our main brief we failed to lay sufficient emphasis upon one phase of the question involved, *i. e.*, the manner in which the statute directs the Secretary of Labor to make regulations for the enforcement of the Immigration Act of 1924.

First and foremost we must remember that petitioners left the United States on the journey in question in August, 1923, at which time the Immigration Act of 1921 as amended by the Act of 1922 was in force, which Act carried no provision either for applying for or issuing re-entry permits. At that time it was impossible for petitioners to secure any document in the nature of a re-entry permit, and they did the only thing within their power, namely, to execute before

a Notary a declaration of their intention to return within six months and to have affixed thereon a County Clerk's certificate (R. 71), so that when afterwards they should apply to a Consul for a visa, they could exhibit it to him as evidence of their status as residents of the United States. The present Act was not passed until May 26, 1924 and did not become effective until July 1, 1924.

An examination of Section 10 of the Immigration Act of 1924 (8 U. S. C. 210) will show that said section is a complete entity and contains within itself a provision for the making of regulations for *its* enforcement.

An examination of Section 13 (a) of the Act of 1924 (8 U. S. C. 213-a) will show that it provides that no immigrant shall be admitted to the United States unless he has an unexpired immigration visa. However, an examination of Sub-Section (b) of said Section 13 will show that it provides

> (b) "In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa."

It particularly is to be noted that this section also is a separate and distinct entity and contains a provision for the making of regulations for *its* enforcement. Certainly it does not relate to the same regulations as those contemplated for the enforcement of Section 10. Therefore, Section 13 (b) can only be construed as providing a means whereby a returning resident can re-enter without a visa even though not possessed of a re-entry permit.

At page 7 of respondent's memorandum he prints in full what he contends to be the Secretary of Labor's regulations applicable to the case at bar, namely, Rule 3, Sub-Divisions F and I, Par. 1 (Immigration Laws and Rules, January 1, 1930, p. 122). Both of these subdivisions call for either a visa or a re-entry permit except and only in the cases of alien residents returning from temporary visits to foreign

contiguous territory. Section 13 (b) provides for the re-entry without visas, or, by inference, re-entry permits, of returning alien residents no matter from whence they are returning.

From all of the foregoing it clearly is apparent that the Secretary of Labor has made no regulations for the proper enforcement of the provisions of Section 13(b), and that petitioners lawfully cannot be excluded from re-entry into the United States merely because the Secretary of Labor has made no regulations which conform with the provisions of law applicable to their cases.

For all of the foregoing reasons petitioners respectfully pray that the decision of the Court below be reversed, that the writ of habeas corpus be sustained, and that the relators be discharged.

HAROLD VAN RIPER,
Attorney for Petitioners,
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Borough of Manhattan,
New York.

FILED
AUG 5 1931
CHARLES ELMORE CROPLEY
CLERK

FILE COPY

No. 162

In the Supreme Court of the United States

OCTOBER TERM, 1931

UNITED STATES EX REL. ASPASIA POLYMERIS AND ANTIGONE POLYMERIS, PETITIONERS

v.

JOSEPH W. TRUDELL, IMMIGRATION INSPECTOR IN CHARGE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 162

UNITED STATES EX REL. ASPASIA POLYMERIS AND Antigone Polymeris, Petitioners

v.

JOSEPH W. TRUDELL, IMMIGRATION INSPECTOR IN Charge

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The respondent does not oppose the issuance of certiorari in this case.

OPINIONS BELOW

The opinion of the District Court (R. 115) has not been reported. The opinion of the Circuit Court of Appeals (R. 127) is reported in 49 F. (2d) 730.

JURISDICTION

The judgment sought to be reviewed was entered on May 11, 1931. (R. 131.) A petition for rehear-

ing was denied on May 27, 1931. (R. 135.) The petition for certiorari was filed in this Court on June 13, 1931. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the petitioners, whom both courts below found to be aliens returning from a temporary visit abroad, were entitled to be admitted to this country without presenting an unexpired visa or permit.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 5–8.

STATEMENT

The petitioners are a mother and daughter who originally came to this country from Greece in 1909. They remained here continuously until 1923, except for a visit to Greece in 1913 and 1914. (R. 20, 22, 26, 41–42.) In 1923 they returned to Greece to see the husband and father of the petitioners, who was seriously ill. (R. 26, 43.) While they were in Greece he died. (R. 28, 44.) They sought at various times to obtain from the American Consul in Greece visas as alien residents returning from a temporary visit abroad. The Consul declined to issue such a visa. In 1929 they employed counsel in this country, who was unable to obtain a visa for them. (R. 90–99.) Finally he

advised the petitioners to obtain a British visa which would enable them to go to Canada and then to apply for admission to the United States at a border port of entry. (R. 32–33.) On August 2, 1930, they presented themselves at the border and sought admission. They were given a hearing before a Board of Special Inquiry, which refused to allow their admission on the ground that they were "persons not in possession of valid quota Consular Immigration visas." (R. 48, 84.) The petitioners then obtained a writ of *habeas corpus* from the District Court for the District of Vermont and that court ordered that they be discharged from custody. (R. 115–117.) On an appeal to the Circuit Court of Appeals for the Second Circuit, this decision was reversed and it was held that the petitioners had been properly excluded.

Both the District Court and the Circuit Court of Appeals found as a fact that they were returning from a temporary visit abroad. (R. 116, 129.)

DISCUSSION

We do not acquiesce in the propriety of the finding of the courts below that the petitioners were returning from a temporary visit abroad.

But on their finding that the petitioners were resident aliens returning from a temporary visit abroad, the question presented in this case is whether they may be excluded because they are not in possession of a valid visa or return permit. On

this issue the decision below is substantially in conflict with the decision of the Circuit Court of Appeals for the First Circuit in *Johnson* v. *Keating ex rel. Tarantino,* 17 F. (2d) 50, where it was held by a divided court that a person who was in fact an alien resident returning from a temporary visit abroad could not be excluded because he did not present a valid consular visa.

CONCLUSION

In view of this conflict of decisions, the respondent does not oppose the issuance of the writ of certiorari.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
NUGENT DODDS,
Assistant Attorney General.
CLAUDE R. BRANCH,
Special Assistant to the Attorney General.
HARRY S. RIDGELY,
ERWIN N. GRISWOLD,
Attorneys.

AUGUST, 1931.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

STATUTES

The Immigration Act of 1924 (Act of May 26, 1924), c. 190, 43 Stat. 153, 155, 158, 161, 165, provides in part as follows:

> SEC. 4. When used in this Act the term "non-quota immigrant" means—
>
> * * * * *
>
> (b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad; * * *. (U. S. C., Title 8, Sec. 204.)
>
> * * * * *
>
> SEC. 10. (a) Any alien about to depart temporarily from the United States may make application to the Commissioner General for a permit to reenter the United States, stating the length of his intended absence, and the reasons therefor. Such application shall be made under oath, and shall be in such form and contain such information as may be by regulations prescribed, and shall be accompanied by two copies of the applicant's photograph.
>
> (b) If the Commissioner General finds that the alien has been legally admitted to the United States, and that the application is made in good faith, he shall, with the approval of the Secretary of Labor, issue the

permit, specifying therein the length of time, not exceeding one year, during which it shall be valid. The permit shall be in such form as shall be by regulations prescribed and shall have permanently attached thereto the photograph of the alien to whom issued, together with such other matter as may be deemed necessary for the complete identification of the alien.

(c) On good cause shown the validity of the permit may be extended for such period or periods, not exceeding six months each, and under such conditions, as shall be by regulations prescribed.

(d) For the issuance of the permit, and for each extension thereof, there shall be paid a fee of $3, which shall be covered into the Treasury as miscellaneous receipts.

* * * * *

(f) A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning. (U. S. C., Title 8, Sec. 210.)

* * * * *

SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa * * *.

(b) In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being re-

quired to obtain an immigration visa. (U. S. C., Title 8, Sec. 213.)

* * * * *

SEC. 23. Whenever any alien attempts to enter the United States the burden of proof shall be upon such alien to establish that he is not subject to exclusion under any provision of the immigration laws; * * *. (U. S. C., Title 8, Sec. 221.)

REGULATIONS

Rule 3, Subdivision F, paragraph 1 (Immigration Laws and Rules, January 1, 1930, p. 122) reads as follows:

> No immigrant, whether a quota immigrant or nonquota immigrant, of any nationality shall be admitted to the United States unless such immigrant shall present to the proper immigration official, at the port of arrival, an immigration visa duly issued and authenticated by an American consular officer: *Provided,* That (a) aliens who have been previously lawfully admitted to the United States and who are returning from a temporary visit of not more than six months to Canada, Newfoundland, St. Pierre, Miquelon, Bermuda, Mexico, Cuba, and other islands included in the Bahama and Greater Antilles groups, or such aliens who are returning from a temporary visit to any other foreign country and who are in possession of a permit to reenter the United States issued in accordance with the provisions of section 10 of the immigration act of 1924, and (b) children born subsequent to the issuance of an immigration visa to the accompanying parent, if otherwise admissible, shall be permitted to enter the United States without an immigration visa.

Rule 3, Subdivision I, paragraph 2 (Immigration Laws and Rules, January 1, 1930, p. 126), reads as follows:

> An alien claiming to be a nonquota immigrant on the ground that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad shall not be admitted as such unless at time of arrival he shall establish that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad, and presents an unexpired valid immigration visa duly issued by an American consular officer designating the holder as such: *Provided,* That the presentation of an unexpired valid permit to reenter, duly issued to the holder thereof pursuant to the provisions of section 10 of the immigration act of 1924, shall be deemed to show prima facie that such holder is returning from a temporary visit abroad, and shall be accepted also in lieu of immigration visa: *And further provided,* That any alien who establishes that he has been previously lawfully admitted to the United States and is returning from a temporary visit of not more than six months to Canada, Newfoundland, St. Pierre, Miquelon, Bermuda, Mexico, Cuba, and other islands included in the Bahama and Greater Antilles groups shall be permitted to enter the United States without a passport, an immigration visa, or permit to reenter.

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No. 162

In the Supreme Court of the United States

OCTOBER TERM, 1931

UNITED STATES OF AMERICA EX REL. ASPASIA POLYMERIS AND ANTIGONE POLYMERIS, PETITIONERS

v.

JOSEPH W. TRUDELL, IMMIGRATION INSPECTOR IN CHARGE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The opinion of the District Court for the District of Vermont (R. 74) is not reported. The opinion of the Circuit Court of Appeals (R. 79) is reported in 49 F. (2d) 730.

JURISDICTION

The judgment sought to be reviewed was entered May 11, 1931. (R. 83.) A formal order denying petition for rehearing was entered on May 27, 1931. (R. 86.) The petition for certiorari was filed in this Court on June 13, 1931, and was granted on

October 12, 1931. (R. 86.) The jurisdiction of this Court rests on Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the petitioners, whom both courts below found to be aliens returning from a temporary visit abroad, were entitled to be admitted to this country without presenting an unexpired visa or permit.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix (*infra,* pp. 32–42).

STATEMENT

This case originated upon a petition to the District Court for writs of *habeas corpus* by which the relators sought discharge from custody of the respondent, an immigration inspector. The petition contained the following allegations (R. 2–4):

The relators are a mother and daughter, who were born in Greece and are still citizens of that country, although they are residents of the City of New York. They came to the United States in 1909 and remained here continuously until 1923 except for a visit to Greece for about a year beginning in 1913. In 1923 they returned to Greece to see the husband of the older relator, who was seriously ill. While they were in Greece he died. In January, 1924, the daughter wrote to the American Consul at Athens, asking that she be given permission for an extended stay, and she received a

letter from him to the effect that her stay would be extended upon good cause being shown. The petition contains other allegations as to the attempts of the relators to obtain visas to return to this country. These attempts were unsuccessful. The facts in regard to this matter are discussed under point IV, *infra,* in which we contend that the Consul did not act arbitrarily in refusing to issue such visas.

The petition goes on to allege that the relators went to Montreal and on August 2, 1930, presented themselves at the United States Immigration Office at St. Albans, Vermont, and applied for readmission to the United States as returning residents; that a hearing was had before the Board of Special Inquiry; that the Board decided to exclude them, and that the Secretary of Labor upheld the decision of the Board. The petition also avers that "there was absolutely no evidence before the Board to support a finding that relators were not aliens previously lawfully admitted to the United States who were returning from a temporary visit abroad."

The return of the respondent (R. 4–10) justified detention of the relators on the basis of the decision of the Secretary of Labor, who evidently accepted the conclusions of the Board of Review that the relators were inadmissible because they were not in possession of valid immigration visas or return permits, and also because they were not returning from a temporary absence abroad. The transcript of the record of the hearing before the Board of Spe-

cial Inquiry was made part of the return. (R. 14–72.) The relators filed a traverse. (R. 73.) The case was heard on this record.

The relators admitted that they had no unexpired immigration visa or return permit of any kind issued by the United States. (R. 23, 28.) From their testimony before the Board it appears that they sailed from Cherbourg, France, to Montreal with a Greek passport, valid for Europe and Japan, a Japanese visa and a British visa, which was good for the United Kingdom and Canada for a "journey for the purpose of traveling." They were admitted as nonimmigrants at Quebec for three weeks. (R. 18–19, 29–30.) When examined by the Canadian immigration officer at Quebec they stated that they were going to Japan. Before the Board of Special Inquiry in this country, they admitted that they never had any intention of going to Japan, but obtained the Japanese visa and the British visa so that they could land in Canada and apply to the United States for admission. (R. 18–19, 29–30, 41–42.)

The relators testified that they wrote to the Consul at Athens in regard to a nonquota permit in 1924 and again in 1925, and retained a lawyer in Athens in 1926 to assist them; but although the Consul wrote them in 1924 that they would have to come to him in person about the matter, they never personally went to the Consulate until 1929. It does not appear that they ever made any formal

applications for visas until then. Visas were refused on the ground that they had stayed too long. (R. 16–18, 24, 46, 50, 54.) The record does not show exactly what information the Consul had at any time before 1929.

The District Court held that the relators should be discharged. In the course of its opinion, the court said that the relators were nonquota immigrants who had been previously admitted to the United States and were returning from a temporary visit abroad and that they were entitled to admission, even though they had no immigration visas or return permits. The court also said (R. 74–75):

> These aliens first came here and were legally admitted in 1909, and have had their domiciles here ever since. The evidence that their domiciles were and are here is emphatic—there is none to the contrary. In 1923 they went to Greece, intending to return within six months, but the illness and death of the husband of Aspasia—the father of Antigone—and the settlement of his sizable estate caused them to remain in Greece longer than they had originally intended. After this their return was delayed for a long time by the refusal of the Consul to give them visas.

The respondent appealed and filed assignments of error, which alleged (R. 77–78):

> The Court has erred in sustaining the writ of habeas corpus and discharging the relatrixes for the following reasons:

1. Because the relatrixes were immigrants and had not complied with the provisions of law made for their entry into the United States.

2. Because they did not have properly visaed passports and had no right as returning immigrants to come into the United States without visaed passports or visas, according to law and according to the rules and regulations of the Department of Labor of the United States.

3. Because the relatrixes were not in possession of valid quota consular immigration visas.

These assignments hardly seem sufficient to raise the point that the District Court erred in its finding as to what the evidence showed as to the nature of the relators' stay abroad. The respondent did, however, contend in the Circuit Court of Appeals that the visit was not a temporary one.

The Circuit Court of Appeals reversed the order of the District Court, holding that although under the law and facts the Secretary of Labor had discretion to admit the relators, they could not enter as a matter of right inasmuch as they had no return permits and no immigration visas. (R. 81–83.) In the course of its statement of the facts and in its opinion the court said (R. 79, 80, 81):

> * * * They both were domiciled in New York from 1909 and the evidence is perfectly plain and convincing to the effect that neither of them has abandoned her domicile but has at all times since it was ac-

quired intended to keep it and to make her permanent residence in this country.

* * * * *

* * * It is true that they had previously lawfully been admitted, had established their domicile here and were returning from a visit abroad. Their visit had been somewhat extended first by the sickness and death of Aspasia's husband, by the necessity for remaining to settle his estate, and then by the delay occasioned by their persistent, though fruitless, attempts to obtain return permits. * * * We think the relators have brought themselves well within the claimed status as immigrants once lawfully admitted who were returning from a temporary visit abroad. They always intended to come back as soon as they could. That depended upon the condition of health of Aspasia's husband and after he died upon the time required for them to remain to attend to the settlement of his estate. * * *

SUMMARY OF ARGUMENT

Even although we assume that the evidence introduced before the Immigration Board established that the relators are immigrants previously lawfully admitted to the United States who are returning from a temporary visit abroad, they are inadmissible because they had neither a return permit nor a nonquota visa.

Section 13(a) of the Immigration Act of 1924, which governs their case, provides, as a general

rule, that even such immigrants shall not be admitted unless they have visas. We contend that the only exceptions to this requirement are such classes of cases as may be prescribed by regulations in accordance with the provisions of Section 13(b). The regulations prescribe no exception which is applicable to the relators, and the Secretary was not required by statute to prescribe any exception applicable to any particular class of cases.

It was within the power of Congress to exclude immigrants previously lawfully admitted to the United States who are returning from a temporary visit abroad unless they present visas.

The courts have no jurisdiction to review the action of a Consul in refusing an immigrant a visa under any circumstances. Congress may provide that the decision as to the issuance of a visa be left entirely to consular agents, without being subject to judicial review, and the Immigration Act of 1924 did in effect so provide. The language of the Act, as well as practical considerations, indicates that Congress did not intend that the question of eligibility for visas could be litigated in the courts of the United States.

Even if there are exceptional cases in which the courts may disregard the absence of a visa, they may not do so where consular officers have acted deliberately and not arbitrarily. Neither of the courts below found that the consul did act arbitrarily. The record shows deliberate consideration

of the matter by a consular officer, and we submit that there is no basis for contending that he acted arbitrarily.

ARGUMENT

I

THE RELATORS WERE NOT ENTITLED TO ENTER THIS COUNTRY INASMUCH AS THEY HAD NO VISAS OR RETURN PERMITS

The relators admit that they had neither return permits nor immigration visas, but contend that as they had been previously lawfully admitted to the United States and were returning from a temporary visit abroad they should be admitted without presenting either form of document. We submit that as they had neither form of document, it was proper to exclude them. We assume that the evidence introduced before the Immigration Board showed that they were immigrants previously lawfully admitted to the United States returning from a temporary visit abroad.

The aliens left the United States in August, 1923, but they did not actually return to our border until 1930 and evidently they made no attempt to return to this country until after the passage of the Act of May 26, 1924. It is clear that their rights are governed by the provisions of that Act. (See Section 31, p. 38, *infra.*) This the relators do not dispute.

The question then is whether under that act the Secretary of Labor had authority to exclude the

relators upon the ground that they had no visas. Section 13 of the Act provides, in part:

> (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a nonquota immigrant[1] if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws.
>
> (b) In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa.

From this it appears that the enactment of Congress is that no immigrant shall be admitted to the United States unless he has an unexpired immigration visa, but that this requirement, in so far as it affects immigrants returning from temporary visits abroad, may be dispensed with in cases and under conditions prescribed by regulation. Unless, therefore, the relators can bring themselves within

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[1] Section 4 of the Act provides in part:

"When used in this Act the term 'nonquota immigrant' means—

* * * * *

"(b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad; * * *."

the conditions which have been prescribed by regulation for dispensing with an immigration visa, their admission is prohibited, not by regulation, but by the statute itself, because they have no immigration visas. The indispensable condition, now imposed by the regulations for dispensing with an immigration visa in case of immigrants returning from Greece, is the possession of unexpired permits to return. (See pp. 38–39, *infra.*)

The relators, of course, concede that these regulations contain no provisions dispensing with an immigration visa applicable to such a case as theirs, but assert that they "lawfully can not be excluded from reentry into the United States merely because the Secretary of Labor has made no regulations which conform with the provisions of law applicable to their cases." The answer is that the law does not require the Secretary to prescribe regulations covering any particular class of cases. The effect of Section 13 (a) is to require visas as a general rule, and paragraph (b) goes no further than to leave it to the Secretary to determine what exceptions to the rule he will make. He is to decide in what "classes of cases," and under what conditions the requirement of a visa is to be foregone.

The relators rely upon *Johnson* v. *Keating*, 17 F. (2d) 50, in which a majority of the Circuit Court of Appeals for the First Circuit (with Judge Johnson dissenting) held that an alien who proved that he was returning from a temporary visit abroad was entitled to be admitted without either

a visa or a permit. The court there said of the 1924 Act (p. 51):

> Taking the provisions as to permits and visas together, we think it clear that Congress intended them as convenient, but not essential, evidence for determining the real status of nonquota immigrants returning from a temporary absence.

This conclusion is evidently based largely upon the language of Section 10 (f), which provides:

> A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning.

The regulations do not make the permit the exclusive means of establishing that the alien is returning from a temporary visit abroad. Its possession, whatever its evidentiary effect may be under Section 10 (f), is made the condition for dispensing with the possession of an immigration visa required under Section 13 (a). That Section 10 (f) is not affected by the regulations is apparent, because it is clear from their terms that the relators would have been admissible if they had presented an unexpired immigration visa, and had established, by any satisfactory proof and without producing an unexpired permit, that they had been

previously lawfully admitted to the United States and were returning from a temporary visit abroad.

The provision quoted from Section 10 (f) deals with the evidentiary effect of the permit. It does not limit either the requirement of an immigration visa under Section 13 (a) or the authority to dispense with this requirement conferred by Section 13 (b). It is, we submit, clear that Congress did not intend to dispense with immigration visas even in the case of aliens returning from temporary visits abroad, except under such conditions as might be prescribed by regulation.

Johnson v. *Keating,* 17 F. (2d) 50, *supra,* is the only case outside of the Second Circuit which has decided the point here involved. That the decision and reasoning in that case are contrary to our contentions can not be denied. It should be pointed out, however, that after that case was decided and before the relators applied for admission, the regulations had been amended so as to eliminate the inconsistencies to which the court referred in that case.

II

IT WAS WITHIN THE POWER OF CONGRESS TO EXCLUDE ALIENS RETURNING TO THIS COUNTRY AFTER TEMPORARY VISITS ABROAD UNLESS THEY HAVE VISAS

The petition for certiorari states that one of the questions presented is (p. 2):

> Whether or not under the Constitution of the United States a lawfully domiciled alien has the right to occupy, depart from and

> return to his domicile without let or hindrance.

This question is not argued in the brief, and it seems clear from the decisions of this Court that Congress has power to exclude aliens, even those having a residence in this country, unless they present visas upon their return.

Thus, in *Lapina* v. *Williams*, 232 U. S. 78, the Court construed the Immigration Act of 1907 as permitting the deportation of a woman who had remained in this country for more than three years after first entry, had gone abroad for a temporary purpose, had returned and had practiced prostitution within three years of her reentry. In the course of its opinion the Court said (p. 88):

> The authority of Congress over the general subject matter is plenary; it may exclude aliens altogether, or prescribe the terms and conditions upon which they may come into or remain in this country.

See also *Mahler* v. *Eby*, 264 U. S. 32, 39; *Tiaco* v. *Forbes*, 228 U. S. 549, 556–557; *Low Wah Suey* v. *Backus*, 225 U. S. 460, 467, 468; *Keller* v. *United States*, 213 U. S. 138, 143–144; *The Japanese Immigrant Case*, 189 U. S. 86, 97.

III

THE COURTS HAVE NO JURISDICTION TO REVIEW THE ACTION OF A CONSUL IN REFUSING TO ISSUE AN IMMIGRANT A VISA UNDER ANY CIRCUMSTANCES

Although the relators do not argue that the courts may review the decision of a Consul refusing

to issue a visa, it seems desirable to discuss this matter.

It is within the power of Congress to provide that the question of the eligibility of an applicant for a visa shall be left ultimately to executive officers.

In *Lem Moon Sing* v. *United States,* 158 U. S. 538, the Court upheld a provision in the Appropriation Act of August 18, 1894 (c. 301, 28 Stat. 372, 390), which provided that, in certain cases

> the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury.

The Court affirmed the denial of the writ of *habeas corpus* applied for by a Chinese merchant who asserted that he had a permanent domicile in the United States, that he had left the country on a temporary visit to his native land with the intention of returning and continuing his residence here, and that the Act under which he was excluded was passed during his absence. The Court said (p. 547–548):

> * * * While he lawfully remains here he is entitled to the benefit of the guaranties of life, liberty, and property, secured by the Constitution to all persons, of whatever race, within the jurisdiction of the United States. His personal rights when he is in this country and such of his property as is here dur-

> ing his absence, are as fully protected by the supreme law of the land as if he were a native or naturalized citizen of the United States. But when he has voluntarily gone from the country, and is beyond its jurisdiction, being an alien, he cannot reenter the United States in violation of the will of the government as expressed in enactments of the law-making power. He cannot, by reason merely of his domicile in the United States for purposes of business, demand that his claim to reenter this country by virtue of some statute or treaty, shall be determined ultimately, if not in the first instance, by the courts of the United States, rather than exclusively and finally, in every instance, by executive officers charged by an act of Congress with the duty of executing the will of the political department of the government in respect of a matter wholly political in its character. He left the country subject to the exercise by Congress of every power it possessed under the Constitution.

See also *Fok Yung Yo* v. *United States,* 185 U. S. 296, 302; *Wong Wing* v. *United States,* 163 U. S. 228, 231; *Fong Yue Ting* v. *United States,* 149 U. S. 698, 713–714; *United States ex rel. Ulrich* v. *Kellogg,* 30 F. (2d) 984 (App. D. C.), certiorari denied *sub nom United States ex rel. Ulrich* v. *Stimson,* 279 U. S. 868.

It remains to consider what the Act of 1924 does provide.

We submit that by the Immigration Act of 1924 Congress left the decision as to the eligibility of an applicant for a visa to the consular officer and provided for no judicial review of his decisions.

Thus, Section 2 (pp. 32–33, *infra*) provides that

> (a) A consular officer upon the application of any immigrant * * * may * * * issue to such immigrant an immigration visa * * *.
>
> * * * * *
>
> (f) No immigration visa shall be issued to an immigrant if it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that the immigrant is inadmissible to the United States under the immigration laws, nor shall such immigration visa be issued if the application fails to comply with the provisions of this Act, nor shall such immigration visa be issued if the consular officer knows or has reason to believe that the immigrant is inadmissible to the United States under the immigration laws.

Section 7(a) provides that every immigrant applying for an immigration visa shall make application therefor in duplicate in such form as shall be by regulations prescribed and specifies in detail the information which the application shall give.

Section 8 provides:

> A consular officer may, subject to the limitations provided in sections 2 and 9, issue an immigration visa to a nonquota immi-

grant as such upon satisfactory proof, under regulations prescribed under this Act, that the applicant is entitled to be regarded as a nonquota immigrant.

See also the instructions issued to Consuls, pp. 40–42, *infra*.

Nowhere in the Act is there any express provision for any review of the decision of the consular officer.

The language of the statute above referred to indicates that the granting of a visa to an immigrant is to be determined by the consular officer upon information submitted to him. The issuance of a visa is not a mere ministerial act. A decision on an application involves the exercise of the broadest judgment and the consideration of all available information. It requires a determination as to whether in fact the alien possesses the qualifications producing eligibility under the numerous statutes on the subject. It should be borne in mind that perhaps the most numerous class of cases in which consular officers consider the question of issuing visas are for quota immigrants. They are also given the power to issue visas on passports of aliens who are not immigrants but who seek to come to the United States.[2]

Hundreds of thousands of applications for visas, immigrant and nonimmigrant, are annually made

[2] See Act of May 22, 1918, c. 81, 40 Stat. 559; Act of March 2, 1921, c. 113, 41 Stat. 1217; Executive Order No. 4813, Immigration Laws and Rules of January 1, 1930, p. 100.

to our consular officers abroad. A large percentage of such applications are refused. It is inconceivable that Congress could have contemplated that every alien whose application for visa is denied should have a right in the courts of this country to review the decision of the officer. The consular officer is outside of the jurisdiction of the courts of the United States. The courts of the country in which he is situated would hardly assume to control his action. Such suits, if maintained at all, must be brought in the courts of the United States. If our courts are to review consular actions in such cases the records of the consular officials must be transported to the United States, and in many cases the consuls themselves must be required to attend here to justify their action. Under well-settled principles, and especially as there are no rights involved which are protected by our Constitution, the decision of the consular officers and of their superior, the Secretary of State, in matters of this kind should be considered final and conclusive.

There is no provision in any of the statutes applicable to this case which requires that any formal hearing be had by the consular officer, or provides that the applicant shall be entitled to summon witnesses or formally present evidence. It is contemplated that the applications for visas shall be decided in a summary way, without any formalities, without any hearing except the consideration of such documents as the applicant cares to present, and that in reaching a decision the con-

sular officers may avail themselves of any information on the subject however obtained. Much of the information they obtain respecting applicants for visas is derived from confidential sources, which would dry up if the United States should be compelled to disclose the evidence in court.

It is a desirable general policy that the eligibility of immigrants be determined to as great an extent as possible before the immigrants sail. If ineligible immigrants are permitted to come to this country, the hardships which will result from their exclusion after arrival at our ports will be quite intolerable. It was therefore fair to make possession of a visa issued by the consul before embarkation one of the prerequisites of entry. These considerations evidently led to the enactment of the provisions requiring visas. See Report of Committee on Immigration and Naturalization of the House of Representatives, 68th Cong., 1st Sess., Report No. 350, pp. 10–12.

Under all these conditions the conclusion must be that Congress did not intend that aliens abroad whose applications for passport visas or immigration visas have been denied may nevertheless come to this country and upon their exclusion litigate in our courts the propriety of the action of the Consul in refusing a visa.

Normally, the alien who is refused a visa would never come to the United States. He would have great difficulty in obtaining passage on any vessel because of Section 16 of the 1924 Act, which makes

it unlawful for any owner of a vessel to bring to the United States by water an immigrant who has not an unexpired immigration visa. Such an alien might, of course, attempt through a friend or attorney in the United States to compel the Secretary of State by mandamus to have a visa issued. This has occasionally been attempted. In *Friedman* v. *Kellogg,* 54 Wash. Law Reporter 846, a writ of mandamus of limited scope was granted by the Supreme Court of the District of Columbia in a somewhat similar matter. In other cases it has been refused. See *United States ex rel. Ulrich* v. *Kellogg,* 34 F. (2d), 984 (certiorari denied 279 U. S. 868), *supra; United States ex rel. Karolyi* v. *Kellogg,* Law No. 71040, in the Supreme Court of the District of Columbia. The latter case involved the issuance of a passport visa to an alien who was not an immigrant. The relator moved to make the respondent's answer more definite. The Government submitted substantially the argument which we have made above and urged that there was no occasion to consider the form of the pleadings when the ultimate purpose was to raise issues which the court would have to decline finally to pass upon. The court overruled the motion and the case proceeded no further.

If, as we contend, Congress did not intend to give the courts jurisdiction to review such decisions of Consuls in cases where the alien was abroad, it could hardly have contemplated such a review when immigrants come to our ports with-

out the requisite visas, as the relators have done in this case, i. e., by obtaining admission to Canada through subterfuge.

The best considered cases hold that a person seeking admission has no right to review the Consul's refusal to issue a visa.

In *United States ex rel. London* v. *Phelps,* 22 F. (2d) 288 (C. C. A. 2d), affirming 14 F. (2d) 679 (D. Vt.) (certiorari denied 276 U. S. 630), it was held that the refusal of the Consul to grant a passport visa to an alien who was not an immigrant was not reviewable by the courts. The court said (p. 290):

> It is urged that, even if a visé was lawfully imposed as a condition upon a non-immigrant's entry, the giving of a visé is a ministerial act, which the consul was bound to perform, and consequently the court should regard its omission as immaterial. With this we can not agree. Certainly the giving of a vise is not merely a ministerial act, because some inquiry on the spot, some determination of fact, is essential. It is admitted that the consul may withhold his visé if he believes the passport not to be genuine, or not in the hands of the rightful holder. The instructions of the Secretary of State which supplement the Executive Order, also require the consul to "satisfy himself of the temporary nature of the visit" of the alien. Whether the consul has acted reasonably or unreasonably is not for us to determine. Unjustifiable refusal to

> visé a passport may be ground for diplomatic complaint by the nation whose subject has been discriminated against. See 3 Moore's Digest, 996. It is beyond the jurisdiction of the court.

A petition for certiorari was denied. 276 U. S. 630. See also *United States ex rel. Graber* v. *Karnuth*, 30 F. (2d) 242 (C. C. A. 2d), certiorari denied, 279 U. S. 850; *United States ex rel. Komlos* v. *Trudell*, 35 F. (2d) 281 (C. C. A. 2d), certiorari denied, 280 U. S. 607.

IV

IT DOES NOT APPEAR THAT THE CONSUL AT ATHENS ACTED ARBITRARILY IN REFUSING TO ISSUE NON-QUOTA VISAS TO THE RELATORS

There are cases holding under peculiar circumstances that, if application has been made for a visa or similar certificate and it is clear that the Consul should have granted it, the court will regard as done that which ought to have been done and will consider the case as if the visa had been granted. *In re Spinella*, 3 F. (2d) 196 (S. D. N. Y.); *Ex parte Seid Soo Hong*, 23 F. (2d) 847 (N. D. Cal.).

It may well be that the courts may overlook mere defects in form. We have contended above that the courts have no power to review the deliberate conclusions of consular officers. But if they have any such power it must, we submit, be limited to cases in which it clearly appears that the Consul

acted arbitrarily on the case as it was presented to him.

Here no such situation is shown. Neither the District Court nor the Circuit Court of Appeals found that the Consul did act arbitrarily. The District Court seems to have granted the writ upon the authority of *Johnson* v. *Keating,* 17 F. (2d) 50, holding that no visa is required. The Circuit Court of Appeals held that a visa was required in this case. Although there are some statements by that court as to the facts[3] in regard to the attempts to obtain visas, the court does not discuss the propriety of the action of the Consul, and nothing in the opinion of either court precludes us from examining the evidence as to the situation with which the Consul was faced.

The testimony in regard to this matter given by the daughter before the Board was as follows (R. 16–18, 24, 46, 54):

> Q. When did you first go to the American Consulate at Athens and apply for papers on which to return to the U. S.?
>
> A. I didn't go personally to the American Consulate but I wrote him a letter in 1924.
>
> Q. What month?

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[3] The following statements of facts made by the Circuit Court of Appeals (R. 80) are somewhat inaccurate, as the testimony hereinafter quoted demonstrates: "There was some delay in settling his estate and when the relators were ready to return to this country application was made to the consul by letter some time in 1924 for return permits. They were refused. In 1925, another such application was made and denied."

A. January.

Q. What did you say in that letter?

A. I asked him if I could renew my papers—I had papers made in New York when I came to Greece, and I asked him if I could renew them and he wrote me back and said if I gave full explanation what was the reason, I could stay for another six months' time.[4]

* * * * *

Q. When you received the letter from the American Consulate telling you that for a good reason you might get an extension of time, what did you do next as to getting the extension?

A. Next I did write to him explaining the situation.

Q. When?

A. After my father died of course—I can't remember the month—in 1924, it was, explaining how the circumstances were, that

---

[4] This letter of January 10, 1924, is in evidence as Exhibit B. (R. 59.) It reads as follows:

AMERICAN CONSULAR SERVICE,
CONSULATE GENERAL,
Athens, January 10th, 1924.

ANTIGONE POLYMERIS, *Volo, Greece.*

MADAM: In reply to your letter of Jan. 3rd, I have to inform you that your papers can not be renewed for a stay longer than six months time unless you can furnish very good reasons for your longer delay. If you are ill, it will be necessary to send a doctor's certificate to this office, and if you are delayed on account of personal business you will have to explain in detail all the circumstances which make it necessary for you to request an extension of time.

I am, Madam,
Yours very respectfully,

W. L. LOWRIE,
American Consul General.

I had to stay with the property, etc., and he wrote back an answer that I would have to come in person to Athens—to him personally—and arrange it later on.

Q. Did you reply to that letter?

A. No, I didn't.

Q. When did you go to Athens to arrange it?

A. In 1925 I wrote him another letter asking him if I could get a nonquota permit, and he refused me.

Q. Did he tell you why?

A. Well I don't remember, but I think it was because I stayed too long, you see.

Q. Since you were refused by the American Consul in 1925, have you made any further effort to get papers on which to return to the U. S.?

A. Yes, I did when we moved to Athens in 1926 and I put the matter in some lawyer's hands, J. Tsatsonis, to take care of my case, but he couldn't succeed so he told me to put the matter to my brothers and take care of it in the United States.

Q. Have you personally ever applied at the American Consulate for papers?

A. Not until lately, but my brothers got in touch with Mr. Van Riper and he prepared me some papers and I went to the Consulate personally with my mother.

Q. When did you go to the American Consulate?

A. That was around January 1929.

Q. Where?

A. In Athens.

Q. What did the Consul tell you?

A. He refused me.

Q. Why?

A. He couldn't grant me a nonquota permit.

Q. Did he say why he couldn't?

A. Because I stayed too long.

* * * * *

Q. Did you or your mother ever seek an extension of time on account of illness?

A. Never.

Q. Did you ever furnish the American Consul with a detailed explanation of the personal business which detained you?

A. Yes.

Q. When did you furnish that?

A. It was later—after my father died; maybe two months—I don't remember the date.

Q. Why didn't you go to see the Consul when he told you to come, instead of writing?

A. It was very far.

Q. How many miles?

A. Volo to Athens—I don't know the miles; I can tell how long it takes to go. You leave at night and you get there the next night at six.

* * * * *

Q. Didn't you change your mind after your father died?

A. In 1926 I hired a lawyer to handle the case in Athens and he couldn't succeed.

Q. What was the name of the lawyer?

A. Mr. J. Tsatsones.

Q. What did this lawyer do?

A. He couldn't succeed.

Q. He couldn't succeed in what?

A. In getting me a quota visa.

Q. And also your mother?

A. O, yes, every time.

Q. When did you first hire a lawyer in New York?

A. In 1926.

Q. Did you go to the American Consulate in person after he wrote you in January, 1924?

A. I only went in person when Mr. Van Riper sent me those papers.

Q. What papers?

A. I left some papers with you the other day.

* * * * *

Q. Do you recollect my reading you an excerpt from a letter marked "Exhibit C" in which he stated that there is no record at the Consulate General's in Athens, Greece, from the time of the letter of January 10, 1924, marked "Exhibit B," to March 13, 1929, when you appeared at the Consulate?

A. That isn't true because in 1924, besides the one I referred to, I wrote another letter—I don't remember the month, but after my father died in 1925 I wrote again and in 1926.

Q. Did you go at any time to the Consulate before March 13, 1929?

A. No.

Q. You were living in Athens, why didn't you go?

A. Because I didn't think it was any use.

Q. The Consul states in his letter of January 10th, marked "Exhibit B," that you

should present the reasons for wanting an extension?

A. I did explain.

Q. You didn't appear personally, although you were there a matter of three or four years?

A. You see I told you I had been in Athens but you see all the time, but in 1925 they refused me and I didn't think he would grant me a visa if I went personally, as he refused me in his last letter.

Q. Where is this letter of 1925?

A. I haven't got it.

The mother, Aspasia, testified, in effect, that until about two years ago she left the entire matter to her daughter and evidently the mother did not see the Consul or communicate with him until that time. (See R. 50.)

Even if we accept as true all of the testimony of Antigone, it appears that she did not comply with the requirements of the law or the request of the Consul. She says that when she wrote to the consul after her father's death he wrote, in 1924, that she would have to come in person to Athens to arrange the matter; that she made no reply to that letter, and that, although she wrote again in 1925, she did not appear at the Consulate until 1929.[5]

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[5] Nothing in the record indicates that she ever made or attempted to make the written application for a visa which section 7(a) prescribes or that she furnished the Consul with information which section 7(b) requires, ~~but which the Consul may waive~~. (See pp. 34, 42, *infra*.)

In this situation, it was not improper for the Consul to decline to grant her a visa. The Act of 1924 and the regulations evidently contemplate that temporary visits ordinarily last less than a year, and that extensions will be given for but six months at a time and then only upon a sufficient showing. (See Section 10 (b) and (c), p. 36, *infra,* and regulations[6] printed on pp. 40–42, *infra.*) It would seem reasonable for the Consul to require a personal interview with the applicant asking for an extension in order to cross-examine her, ascertain the exact situation, and form some idea as to her good faith. The relators here, according to their own testimony, entirely disregarded this request of the Consul. Even if, as the daughter testified, she did write again in 1925 requesting a nonquota visa, that was hardly enough to require

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[6] The Act of May 19, 1921, as amended (42 Stat. 5), in Section 2(d), provided "that aliens returning from a temporary visit abroad * * * may, if otherwise admissible, be admitted notwithstanding * * * " the quota provisions as to other aliens of the same nationality. The Secretary of Labor prescribed the following regulation as to what constituted "a temporary visit abroad": "An alien who remains abroad in excess of six months shall be presumed to have abandoned his domicile in the United States. However, such presumption may be overcome by the production of evidence to the contrary, satisfactory to the appropriate immigration officers." (Paragraph A, page 97, Regulations of May 1, 1917, 7th Ed., August, 1922.)

This regulation was sustained in the following cases: *United States ex rel. Randozzo* v. *Tod*, 297 Fed. 214 (C. C. A. 2d); *Lidonnici* v. *Davis*, 16 F. (2d) 532 (App. D. C.), certiorari denied, 274 U. S. 744.

the Consul to issue it. It is true that a determined effort was made to get the Consul to issue a visa in 1929. (See R. 60–68.) But it does not appear that even then the whole situation as presented was so clear as to compel any reasonable man in his position to reach a conclusion contrary to his determination that the applicants were not nonquota immigrants. The mere fact that the applicants at a later date in this country may have established that fact is beside the point. The Consul, of course, did not appear as a witness before the Board of Special Inquiry. There was no review of the record before him. Exclusion was properly based upon the lack of required papers.

CONCLUSION

We respectfully submit that the judgment below should be affirmed.

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DECEMBER, 1931.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

STATUTES

The Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 154–159, 161, 162, 165, 166, 169, provides as follows:

> SEC. 2. (a) A consular officer upon the application of any immigrant (as defined in section 3) may (under the conditions hereinafter prescribed and subject to the limitations prescribed in this Act or regulations made thereunder as to the number of immigration visas which may be issued by such officer) issue to such immigrant an immigration visa which shall consist of one copy of the application provided for in section 7, visaed by such consular officer. Such visa shall specify (1) the nationality of the immigrant; (2) whether he is a quota immigrant (as defined in section 5) or a nonquota immigrant (as defined in section 4); (3) the date on which the validity of the immigration visa shall expire; and (4) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws as may be by regulations prescribed.
>
> * * * * *
>
> (f) No immigration visa shall be issued to an immigrant if it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that the immigrant is inadmissible to the United States under the immigration laws, nor shall such immigration visa be issued if the appli-

cation fails to comply with the provisions of this Act, nor shall such immigration visa be issued if the consular officer knows or has reason to believe that the immigrant is inadmissible to the United States under the immigration laws. (U. S. C., Title 8, Sec. 202.)

* * * * *

SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation. (U. S. C., Title 8, Sec. 203.)

SEC. 4. When used in this Act the term "nonquota immigrant" means—

* * * * *

(b) An immigrant previously lawfully admitted to the United States, who is return-

ing from a temporary visit abroad; * * *. (U. S. C., Title 8, Sec. 204.)

* * * * *

SEC. 7. (a) Every immigrant applying for an immigration visa shall make application therefor in duplicate in such form as shall be by regulations prescribed.

(b) In the application the immigrant shall state (1) the immigrant's full and true name; age, sex, and race; the date and place of birth; places of residence for the five years immediately preceding his application; whether married or single, and the names and places of residence of wife or husband and minor children, if any; calling or occupation; personal description (including height, complexion, color of hair and eyes, and marks of identification); ability to speak, read, and write; names and addresses of parents, and if neither parent living, then the name and address of his nearest relative in the country from which he comes; port of entry into the United States; final destination, if any, beyond the port of entry; whether he has a ticket through to such final destination; whether going to join a relative or friend, and if so, what relative or friend and his name and complete address; the purpose for which he is going to the United States; the length of time he intends to remain in the United States; whether or not he intends to abide in the United States permanently; whether ever in prison or almshouse; whether he or either of his parents has ever been in an institution or hospital for the care and treatment of the insane; (2) if he claims to be a nonquota immigrant, the facts on which he bases such claim; and (3) such additional information necessary to the proper enforcement of the immigra-

tion laws, and the naturalization laws, as may be by regulations prescribed.

* * * * *

(f) Each copy of the application shall be signed by the immigrant in the presence of the consular officer and verified by the oath of the immigrant administered by the consular officer. One copy of the application, when visaed by the consular officer, shall become the immigration visa, and the other copy shall be disposed of as may be by regulations prescribed.

* * * * *

(h) A fee of $1 shall be charged for the furnishing and verification of each application, which shall include the furnishing and verification of the duplicate, and shall be covered into the Treasury as miscellaneous receipts. (U. S. C., Title 8, Sec. 207.)

SEC. 8. A consular officer may, subject to the limitations provided in sections 2 and 9, issue an immigration visa to a nonquota immigrant as such upon satisfactory proof, under regulations prescribed under this Act, that the applicant is entitled to be regarded as a nonquota immigrant. (U. S. C., Title 8, Sec. 208.)

* * * * *

SEC. 10. (a) Any alien about to depart temporarily from the United States may make application to the Commissioner General for a permit to reenter the United States, stating the length of his intended absence, and the reasons therefor. Such application shall be made under oath, and shall be in such form and contain such information as may be by regulations prescribed, and shall be accompanied by two copies of the applicant's photograph.

(b) If the Commissioner General finds that the alien has been legally admitted to the United States, and that the application is made in good faith, he shall, with the approval of the Secretary of Labor, issue the permit, specifying therein the length of time, not exceeding one year, during which it shall be valid. The permit shall be in such form as shall be by regulations prescribed and shall have permanently attached thereto the photograph of the alien to whom issued, together with such other matter as may be deemed necessary for the complete identification of the alien.

(c) On good cause shown the validity of the permit may be extended for such period or periods, not exceeding six months each, and under such conditions, as shall be by regulations prescribed.

(d) For the issuance of the permit, and for each extension thereof, there shall be paid a fee of $3, which shall be covered into the Treasury as miscellaneous receipts.

* * * * *

(f) A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning. (U. S. C., Title 8, Sec. 210.)

* * * * *

SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the im-

migration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws.

(b) In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa. (U. S. C., Title 8, Sec. 213.)

* * * * *

SEC. 23. Whenever any alien attempts to enter the United States the burden of proof shall be upon such alien to establish that he is not subject to exclusion under any provision of the immigration laws; * * *. (U. S. C., Title 8, Sec. 221.)

SEC. 24. The Commissioner General, with the approval of the Secretary of Labor, shall prescribe rules and regulations for the enforcement of the provisions of this Act; but all such rules and regulations, in so far as they relate to the administration of this Act by consular officers, shall be prescribed by the Secretary of State on the recommendation of the Secretary of Labor. (U. S. C. Title 8, Sec. 222.)

SEC. 25. The provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this Act. An alien, although admissible

under the provisions of this Act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this Act, and an alien, although admissible under the provisions of the immigration laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act. (U. S. C., Title 8, Sec. 223.)

SEC. 31. (a) Sections 2, 8, 13, 14, 15, and 16, and subdivision (f) of section 11, shall take effect on July 1, 1924, except that immigration visas and permits may be issued prior to that date, which shall not be valid for admission to the United States before July 1, 1924. * * *

(b) The remainder of this Act shall take effect upon its enactment.

(c) If any alien arrives in the United States before July 1, 1924, his right to admission shall be determined without regard to the provisions of this Act, except section 23.

REGULATIONS

Rule 3, Subdivision F, paragraph 1 (Immigration Laws and Rules, January 1, 1930, p. 122) reads as follows:

No immigrant, whether a quota immigrant or nonquota immigrant, of any nationality shall be admitted to the United States unless such immigrant shall present to the proper immigration official, at the port of arrival, an immigration visa duly issued and authenticated by an American consular officer: *Provided,* That (a) aliens who have been previously lawfully admitted to the United States and who are returning from a temporary visit of not more than six months to Canada, Newfoundland, St.

Pierre, Miquelon, Bermuda, Mexico, Cuba, and other islands included in the Bahama and Greater Antilles groups, or such aliens who are returning from a temporary visit to any other foreign country and who are in possession of a permit to reenter the United States issued in accordance with the provisions of section 10 of the immigration act of 1924, and (b) children born subsequent to the issuance of an immigration visa to the accompanying parent, if otherwise admissible, shall be permitted to enter the United States without an immigration visa.

Rule 3, Subdivision I, paragraph 2 (Immigration Laws and Rules, January 1, 1930, p. 126), reads as follows:

An alien claiming to be a nonquota immigrant on the ground that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad shall not be admitted as such unless at time of arrival he shall establish that he has been previously lawfully admitted to the United States and is returning from a temporary visit abroad, and presents an unexpired valid immigration visa duly issued by an American consular officer designating the holder as such: *Provided,* That the presentation of an unexpired valid permit to reenter, duly issued to the holder thereof pursuant to the provisions of section 10 of the immigration act of 1924, shall be deemed to show prima facie that such holder is returning from a temporary visit abroad, and shall be accepted also in lieu of immigration visa: *And further provided,* That any alien who establishes that he has been previously lawfully admitted to the United

States and is returning from a temporary visit of not more than six months to Canada, Newfoundland, St. Pierre, Miquelon, Bermuda, Mexico, Cuba, and other islands included in the Bahama and Greater Antilles groups shall be permitted to enter the United States without a passport, an immigration visa, or permit to reenter.

Extract from No. 926, General Instruction Consular, Diplomatic Serial No. 273, issued by the Department of State September 30, 1925, in accordance with Section 24 of the Immigration Act of May 26, 1924:

117. In the absence of such a permit and in the event that the alien claims that he is only temporarily absent from the United States, the consul shall require the alien applicant to verify his statements by such means as may be found practicable, and if he is satisfied that the statements of the alien are true and made in good faith, he may classify the applicant as a nonquota immigrant and issue an immigration visa to him as such

118. Authorization from the Secretary of State is not required by the consul as a basis for granting an immigration visa to a nonquota returning alien.

119. Even in the case of a visit abroad of six months or less, inquiry should be made into the legality of the original entry of the alien. Previous admission, however regular, as a nonimmigrant or as a student under section 4(e) is not considered as "previous lawful admittance" for the purposes of section 4(b) of the act.

120. After an absence the burden of proof is on the returning alien to show—

(*a*) That he was previously lawfully admitted to the United States;

(*b*) That he went abroad with the intention of returning to reside in the United States;

(*c*) That he has an established domicile in the United States; and

(*d*) That his stay abroad, if protracted, was caused by justifiable reasons over which the alien had little or no control.

121. The longer the interval of time that an alien has remained abroad on a temporary visit the more exacting is the inquiry into the four points outlined in paragraph 120. Practically every case of an alien returning from abroad from a protracted visit is made the subject of an investigation by the Board of Special Inquiry at the port of entry and many are referred on appeal to the Secretary of Labor. It may be said in general terms that after a visit abroad of a year or more the policy of that department is to deny nonquota status unless conclusive evidence on all four points is submitted by the alien.

122. Consuls should be guided by the policy outlined, and in any case in which a visa is granted and in which there is any element of doubt in the consul's mind the applicant should be informed of the policy of the Department of Labor and warned that any statements made or evidence presented at the consulate not borne out by the investigations at the port of entry will probably result in his exclusion from the United States.

123. In cases of aliens who come within the purview of section 4(b) and apply for nonquota immigration visas for use in reentering the United States, consuls may waive the documents referred to in section 7(c) of the act. However, in cases of aliens applying for nonquota immigration visas upon the ground of previous lawful admis-

sion to the United States and return from a temporary visit abroad, if consuls have reason to doubt their good faith or right to be readmitted to the United States under the law they may, if they deem it desirable, require any or all of the documents mentioned in section 7(c) if they are available; that is, if it is possible to procure them from the appropriate authorities.

In the edition issued on March 23, 1929, Section 122 was canceled, but the other sections remain unchanged.

U. S. GOVERNMENT PRINTING OFFICE: 1931

FILE COPY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 162.

UNITED STATES, *ex rel.*, ASPASIA POLYMERIS and ANTIGONE POLYMERIS,

Petitioners,

v.

JOSEPH W. TRUDELL, Immigration Inspector in Charge.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR REHEARING.

HAROLD VAN RIPER,
Attorney for Petitioners.

THE BALLOU PRESS NEW YORK

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR REHEARING.

Petitioners, by their counsel, Harold Van Riper, respectfully ask for a re-hearing in the above entitled matter to the end that if the judgment of the court below be not reversed, that, at least, the decision of this Honorable Court be modified or amplified to the extent of indicating a remedy for the condition with which petitioners are now confronted.

The grounds for this petition are as follows:

FIRST: The decision already has been cited by an Assistant United States Attorney, Southern District of New York, after conference with the other assistants in the civil de-

partment, as holding that even alien residents who go to Canada and return within a few days are barred from re-entry unless possessed of re-entry permits or non-quota immigration visas, notwithstanding they are specifically exempted from such necessity by paragraph 1, Sub-Division F, Rule 3, "Immigration Laws and Rules, January 1, 1930," printed as part of the appendix at page 38 of respondent's brief herein. It, therefore, would seem that the holding "A returning alien cannot enter unless he has either an immigration visa or a return permit" is so general as to permit of misconstruction.

SECOND: In the light of the facts and circumstances peculiar to the case, the decision also might be misconstrued as holding that Section 2 (f) of the act of 1924 (8 U. S. C. 202-f) divests the Secretary of Labor of the power to determine the admissibility of aliens which he for many years exercised under Sections 16 and 17 of the Act of 1917 (8 U. S. C. 152-153) and corresponding sections of prior acts, and places such power solely in American consular officers abroad without a right of review by either the Secretary of State, the Secretary of Labor or the Courts. Such a construction, if proper, would mean that consular officers are the only government officers, from the President down, whose action on behalf of the government, if illegal, cannot be reviewed by a court of competent jurisdiction. In other words, that the consular voice is the only one authorized to express the will of the United States in matters of this kind.

THIRD: Petitioners, like thousands of other lawfully domiciled alien residents of the United States, were temporarily absent from the United States on May 26, 1924, the date of approval, and on July 1st, 1924, the effective date, of the Immigration Act of 1924, and, therefore, could not have secured re-entry permits, inasmuch as Sec. 10(a) of said Act (8 U. S. C. 210-a) provides for their issuance by the Commissioner General of Immigration *only* to aliens

"about to depart temporarily from the United States". For the same reason petitioners cannot now secure re-entry permits, because, in the eyes of the law, they are standing outside the United States at the Border Port of St. Albans, Vermont, seeking entrance into the United States (our italics).

FOURTH: Notwithstanding this Honorable Court, the two Courts below and the Secretary of Labor hold that petitioners are "aliens previously lawfully admitted to the United States who are returning from a temporary visit abroad", nevertheless the Secretary holds that he has no power to readmit them to the United States unless they become possessed of a re-entry permit, which, for the reasons above given, he has not the power to issue to them, or a non-quota immigration visa to be secured from an American Consul abroad. The Secretary's holding that "the aliens have no immigration visaes nor permits and are, therefore, prohibited from entry" is to be found at page 31 of the original petition and brief herein. If this Honorable Court believes that it is still within the discretionary power of the Secretary of Labor, under Section 13-b of the 1924 Act, to readmit petitioners, and other alien residents similarly situated, without re-entry permits or non-quota immigration visas, it would be helpful in the instant case and prevent a multiplicity of future litigation if it saw fit so to indicate.

FIFTH: The Secretary of State holds that he has no power to instruct consular officers in the matter of the issuance of visaes. (Last paragraph letter Aug. 3, 1929, R. 65.) If this Honorable Court believes that in view of Sec. 202, R. S. (5 U. S. C. 156) and Sec. 24 of the Act of 1924 (8 U. S. C. 222) the Secretary of State has the power to instruct consular officers in matters relating to visas, an indication to that effect likewise would be helpful for the same reasons as those given above.

SIXTH: As matters now stand, unless some American Consul sees fit to issue non-quota immigration visas to this sixty-seven-year-old mother, and this thirty-one-year-old sister, of two reputable American citizens of substance, the only relatives whom they have in the world, it is extremely doubtful as to whether or not this little family ever will be reunited, the Greek quota being so small as almost to preclude the possibility of their receiving quota visas during the courses of their natural lives.

SEVENTH: At the time of argument of this matter on December 9, 1931, and in their briefs, petitioners discussed solely the question of the authority of the Secretary of Labor to deny them admission, even though not possessed of re-entry permits or non-quota immigration visas, believing it to be the only relevant and material issue involved. However, respondent devoted only five pages of his brief to said question, and in the remaining nineteen pages of his brief, and in his argument, discussed almost nothing but the question of the consul's right to refuse to issue a visa, a question which, as stated above, petitioners did not believe to be relevant or material. In the course of argument respondent advanced the dangerous theory that consular officers cannot be reached by our Courts, and the Honorable Justices asked questions as to the extent of the consular authority, as to whether or not the Secretary of Labor had the right without cause to refuse admission to returning alien residents of the United States even if possessed of re-entry permits or non-quota visas, and, particularly, as to whether or not there was any legislative history of the matter. Both parties tried to answer the firts two questions but neither party at the time was able to answer the last question. There is a legislative history of the matter and petitioners feel that it, together with their answer to the question as to the extent of the consular authority to refuse to issue visas, should be considered.

Legislative History.

While the Immigration Act of 1924 was still pending before the House, Chief Justice Hughes, then Secretary of State, evidently perceived the danger of just such an occurrence as has transpired in the case at bar. Under date of February 8, 1924 he wrote to Chairman Johnson of the House Immigration Committee (Cong. Rec. Apr. 4, 1924, p. 5585) in part as follows:

> "I fully appreciate the importance of removing present hardships by the issue of immigration certificates to those who would normally come under immigration laws. I indorse this policy. Assuming that treaties were not violated and immigration certificates were demanded of those who normally would be classed as immigrants, I should not object to the giving of authority to consular officers to issue immigration certificates, provided, of course, that consular officers were properly equipped with the requisite staff to carry out the provisions of the law. It seems to me that the granting of such immigration certificates might be treated as so analogous to the granting of vises as properly to come within a broad description of consular functions. In the absence of the violation of any treaty, I assume that the admission of immigrants to this country could be conditioned upon their receiving an immigration certificate in the manner required by our laws; although, of course, if independent machinery through special immigration officials were sought to be set up in foreign countries such officials would have to be properly accredited to the foreign governments and could not function without the consent of the foreign State in whose territory they would act."

and supplemented same in his letter of February 19, 1924 (Cong. Rec. Apr. 4, 1924, p. 5587) by saying:

> "Section 2(f) of the Johnson bill reads as follows:
>
> 'No immigration certificate shall be issued to an immigrant if facts are stated in his application, or in the papers submitted therewith, from which it appears that he is inadmissible to the United States under the

immigration laws, nor shall such certificate be issued if the application fails to comply with the provisions of this act. * * *"

The bill does not seem to give consular officers authority to make any examination of prospective immigrants beyond requiring them to answer the questions in the application and to submit dossiers and prison and military records. Thus if the applicant states that he does not come within any one of the classes subject to exclusion under the immigration law and the dossier and records submitted by him fail to show that he does, it would seem that the consul has no authority under the proposed law to refuse to grant an immigration certificate, even though he knows, or has reason to believe, that the applicant is in fact subject to exclusion. Whether or not it is desirable or feasible for consular officers to apply the immigration tests, a question which I am not undertaking to answer at present, it seems to me that it would be very unfortunate to pass a law generally understood to accomplish something which, as a matter of fact, it does not accomplish. If it is the sense of Congress that there should be a thorough examination of prospective immigrants in the consulates, to ascertain, as far as possible, whether they are subject to exclusion under the immigration law, and that the consuls should have authority to refuse immigration certificates to those who appear to be subject to exclusion, I shall, of course, be glad to cooperate with the committees of Congress for the purpose of formulating the necessary amendments to the bill.

While I see no objection, under international law, to making such a change in the immigration system, it is important to bear in mind that it would add considerably to the work of the consulates and require a proportionate appropriation to carry it out thoroughly and effectively.

I may add that, although it may be deemed undesirable to authorize consuls to examine prospective immigrants with regard to all of the exclusion provisions of the immigration law, in addition to requiring them to fill out the application and submit dossiers and other records specified in the bill, it might still be desirable to authorize a special examination as to certain specified provisions. It is for Congress to decide to what extent,

if at all, consuls are to participate in the enforcement of the immigration law. It is deemed important to have the authority and duty of consuls in this matter prescribed as definitely as possible. * * *"

As a result of all of the foregoing the pending bill, as revised, was reintroduced as H. R. No. 7995 with an accompanying report numbered 350, dated March 24, 1924, in which report at page 10 the following appears:

"This bill defines immigrants and provides that their applications for visa to passports shall be in the form of questionnaires, from which the consuls of the United States shall pass upon the admissibility of the applicants as immigrants. The consuls are given power to reject *for cause*. * * *" (Our italics.)

This question was the subject of discussion in Committee and in the House, and the two letters above mentioned were introduced by Congressman Sabath on April 4, 1924, who, in the course of his remarks (Cong. Rec. Apr. 4, 1924, p. 5584) said:

"The provision contained on lines 11, 12, 13 and 14 of page 2, which calls for information to be given by the intending immigrant, in addition to that specifically enumerated, which the Secretary of Labor shall by regulation prescribe as necessary to the proper enforcement of the immigration laws and the naturalization laws. That is, a provisions so broad as to enable the Secretary to call for an examination such as is required at the port of arrival and which might be interpreted as permitting the consular officer to deny to the immigrant the certificate upon which the right to land depends. I am opposed to conferring such authority upon the consular officers, who would thereby be enabled to prevent immigration arbitrarily, since this absolute power is not subject to a right of review. This would confer tremendous power upon subordinate officials thousands of miles from the seat of government and practically free from effective supervision, upon men who have no special qualifications or experience fitting them for the discharge of such difficult duties and, being only human,

> are bound to have their prejudices. In the past some of our ablest statesmen have strenuously objected to the delegation of such unusual authority to a handful of bureaucrats, practically free from all restraint, who are likely to degenerate into so many little czars."

As a result of all of the foregoing and of investigation prosecuted in foreign countries, it was determined that the setting up of Boards of Special Inquiry and other immigration bodies in foreign countries was impracticable, and the act as finally passed, after conference by both houses, contained Section 2(f) (8 U. S. C. 202-f) reading as follows:

> "(f) No immigration visa shall be issued to an immigrant if it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that the immigrant is inadmissible to the United States under the immigration laws, nor shall such immigration visa be issued if the application fails to comply with the provisions of this act, nor shall such immigration visa be issued if the consular officer *knows* or *has reason* to believe that the immigrant is *inadmissible* to the United States under the immigration laws." (Our italics.)

from which it clearly appears that Congress did not give consular officers any authority other than to require aliens to make out prima facie cases in their application, and, if they so desire, to investigate same. In the case at bar a prima facie case would consist of proof that petitioners had previously been lawfully admitted to the United States, that they had been temporarily absent therefrom without relinquishment of their domiciles therein, and that they were not unconditionally *inadmissible,* as distinguished from merely being subject to exclusion for some reason or reasons specified in Section 3 of the Act of 1917 (8 U. S. C. 136) which the Secretary of Labor could waive by reason of the discretionary power vested in him by the 7th Proviso of said Section 3.

Paragraphs 117 to 123, inclusive, of the Secretary of State's General Instruction Consular No. 926, issued by him in collaboration with the Secretary of Labor in accordance

with Section 24 of the Act of 1924 (8 U. S. C. 222) printed at page 40 of respondent's brief herein, indicate that both executive departments apparently are in accord on the proposition that it is the Consul's duty to issue a non-quota immigration visa if the returning alien resident makes out a prima facie case, as petitioners did in the instant case. A specific ruling on this question likewise would be very helpful.

The question of the finality of consular action and certificates was the subject of review in a case wherein the customs authorities contended that where a consul had issued a certificate as to the extent of the depreciation of the currency of a foreign country, and annexed to a consular invoice, a document without which the importer could not enter his goods at the customs port of entry in the United States, the importer was estopped from questioning such certificate and showing the true, lower value of the currency for the purpose of levying the customs duties thereupon. Such case, *De Forest* v. *Redfield*, 4 Blatch. 478, United States Circuit Court, Southern District of New York, December 29, 1860, page 464, says:

> "The law makes it necessary, that the importer should procure the certificate of the United States consul of commercial agent at the foreign port from which the goods are shipped, not only as to the value of the foreign currency in which the invoice is made out, but as to the value of the goods in such port, and without it they cannot be entered at the Custom-House at all; but it has never been considered that such certificate was more than *prima facie* evidence, either as to the value of the currency or of the merchandise. *It would be singular, indeed, if the certificate of such inferior officers of the Government in relation to question of fact could be held to conclude the party against whom they were presented from showing the truth.*" (Italics ours.)

The decision herein holds in part as follows:

> "The relators have no right to enter the United States unless it has been given to them by the United States.

The burden of proof is upon them to show that they have the right. Immigration Act of 1924, Sec. 23, 43 Stat. 165; Code, Tit. 8, Sec. 221."

This Honorable Court in its preamble, both Courts below, and the Secretary of Labor, held unequivocally, that petitioners were and are immigrants previously lawfully admitted to the United States who were returning from a temporary visit abroad, wherefore they were and are exempt from the numerical quota restrictions of the 1924 Act by reason of the express provisions of Section 4 (b) thereof (8 U. S. C. 204-b), and, therefore, entitled to receive non-quota immigration visas under Section 8 of said Act (8 U. S. C. 208).

Section 25 of the 1924 Act (8 U. S. C. 223) provides:

> "SEC. 25. The provisions of this act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this act. An alien, although admissible under the provisions of this act, shall not be admitted to the United States, if he is excluded by any provision of the immigration laws other than this act, and an alien, although admissible under the provisions of the immigration laws other than this act, shall not be admitted to the United States if he is excluded by any provision of this act." (Our italics.)

The term "Immigration Laws", insofar as applicable to the case at bar, means the basic Immigration Act of February 5, 1917. Therefore, we must examine the provisions of Section 3 of that Act (8 U. S. C. 136) under which the Secretary of Labor derives whatever authority he may possess, other than that given him by Section 13 (a) of the 1924 Act, to exclude aliens from entry into the United States, and an examination thereof shows that petitioners were laboring under none of the disabilities specified therein. Further, an examination of the Secretary of Labor's decision herein (appended to orig-

inal petition for writ of certiorari as pages 28 to 34), shows that he based his order of exclusion on none of said grounds. A further examination of said Section 3 will show that the 7th Proviso thereof permits the Secretary of Labor, in his discretion, to readmit aliens returning after a temporary absence to an unrelinquished United States domicile of seven consecutive years, as were petitioners, even though they may fall within some of the classes therein specified as excludable. Therefore, it is manifest that Congress intended that returning alien residents should be permitted to re-enter unless their presence here would be dangerous to the well-being of the United States.

Another question which has not been considered is the status of aliens after lawful admission into the United States for permanent residence therein. After admission they have the right to acquire and hold real and personal property, to pursue happiness and to do every single thing that a citizen can do except to vote. They have the same rights under the Constitution and the laws, and in the Courts, such rights cannot be wrested from them except by due process of law, and Congress has very carefully safeguarded such rights by the enactment of Section 19 of the 1917 Act (8 U. S. C. 155), an examination of which will show that if an alien's original entry be lawful, the Secretary of Labor cannot terminate his residence in the United States, and deport him therefrom, unless it be shown that after entry he has advocated anarchy or has become a public charge, a criminal, a prostitute or procurer, or a dealer in narcotics.

Does it then seem possible that, in an act intended solely to limit the number of immigrants who may enter the United States under the 1917 Act, Congress intended that alien residents should be stripped of the valuable right of residence so carefully safeguarded under the 1917 Act merely because at the time of their attempted re-entry after a temporary absence they did not possess one of two pieces of paper; the one a re-entry permit, which they never could and cannot now obtain,—because legally abroad now and when the act

was approved; and the other a non-quota immigration visa which a consular officer arbitrarily refused, and probably will containue to refuse to issue to them.

Legislative History of Re-entry Permits.

Prior to May 26, 1924, the date of enactment of the Immigration Act of 1924 which became effective July 1, 1924, re-entry permits were unknown to our statutes.

House Report No. 350, dated March 24, 1924, to accompany H. R. No. 7995, at page 18 contains the following:

> "Provision is made for issuance by the Commissioner General of Immigration of permits to aliens permanently domiciled in the United States who desire to go abroad and return after temporary absence. The permit to re-enter may be issued upon application by the alien with payment fee of $6; it will be valid for six months with privilege of renewal; will identify the alien; but there will be no obligation upon the alien to obtain or carry it. It will be of value only as evidence that the alien to whom it is issued is returning from a temporary visit abroad. *This provision is made solely for the convenience of the alien.*" (Our italics.)

and sub-section (f) of Section 10 of the Law as finally enacted (8 U. S. C. 210-f) reads as follows:

> "(f) A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit *the exclusive means* of establishing that the alien is so returning." (Our italics.)

thus carrying out the Congressional intent as expressed in said Report No. 350.

Legislative History of Sub-section (B) of Section 13 of 1924 Act.

Section 13 (b) prior to submission to the Conference Committee and final enactment was carried as Section 10 (b), reading as follows:

> "Sec. 10 (b): An alien who has been legally admitted to the United States and who departs therefrom temporarily at frequent intervals may be admitted to the United States, under such conditions as may be by regulations prescribed, without being required to obtain a visa certificate in respect of each entry into the United States."

and, as finally enacted (8 U. S. C. 213-b), reads:

> "(b) in such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa."

from which it clearly appears that Congress intended to relieve bonafide alien residents of undergoing all of the formalities applicable to immigrants coming here for the first time, and that regulations should be made merely for the determination of their true status as such. Certainly, an examination of Section 10 (f), above quoted, will show that Congress expressly provided that the regulations should not make the re-entry permit the sole means of establishing previous lawful admission and continuous residence, as do the present regulations quoted on pages 38 and 39 of respondent's brief herein, which was the holding in *Johnson* vs. *Keating*, 17 f. (2d) 50, at page 52.

If these two ladies had merely stepped out of their home without their key and the door locked after them, a good American neighbor first would try his own keys, and, if they failed to open the door, he would then put his shoulder to it

and force it open. The facts in the case at bar are comparable to such a situation.

All of which is respectfully submitted.

HAROLD VAN RIPER,
Attorney for Petitioners,
1 Broadway,
New York.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

HAROLD VAN RIPER, being first duly sworn, deposes and says, that he is a member of the bar of the Supreme Court of the United States and is attorney for the petitioners herein; that he has read the foregoing petition and knows the contents thereof; that said petition is meritorious, and that it is presented in good faith and not for delay.

HAROLD VAN RIPER.

Subscribed and sworn to before me
this 27th day of January, 1932.

DAVID RUSS,
Notary Public, Bronx County.
Certificate filed in N. Y. County.

SUPREME COURT OF THE UNITED STATES.

No. 162.—October Term, 1931.

United States of America *ex rel.* Aspasia Polymeris and Antigone Polymeris, Petitioners,
vs.
Joseph W. Trudell, Immigration Inspector in Charge.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 4, 1932.]

Mr. Justice Holmes delivered the opinion of the Court.

The relators, Aspasia Polymeris and her daughter Antigone, are Greek citizens who lawfully entered the United States in 1909 and lived for a number of years in New York City, which became and remains their domicil. In 1923 on account of the illness of Aspasia's husband they went back to Greece with the intention, which the Courts below found that they retained, of making only a temporary visit. The death of the husband and the necessity of settling his estate prolonged their stay until 1924. Beginning in that year they made several unsuccessful applications to the United States Consul General at Athens for documents that would permit them to return to New York. Finally, in 1929, they got authority to cross Canada on a pretended trip from Greece to Japan and in 1930 presented themselves at St. Albans, Vermont, for admission to the United States. They were taken into custody by the immigration inspector and sought release by habeas corpus, on the ground that they were entitled to enter the country. It was held that they "were properly excluded under Section 13 (a) of the Immigration Act of May 26, 1924, 42 Stat. 153, 161, since the Secretary of Labor did not admit them in his discretion, . . . and neither presented an unexpired valid immigration visa or an unexpired valid permit to reenter in accordance with the regulations promulgated under § 13 (b) of that Act." 49 F. (2d) 730. A contrary decision was reached in *Johnson* v. *Keating*, 17 F. (2d) 50. Therefore a writ of certiorari was granted by this Court.

The relators have no right to enter the United States unless it has been given to them by the United States. The burden of proof is upon them to show that they have the right. Immigration Act of 1924, § 23, 43 Stat. 165; Code, Tit. 8, § 221. By § 13, and the regulations under it, as remarked by the Court below, a returning alien cannot enter unless he has either an immigration visa or a return permit. The relators must show not only that they ought to be admitted but that the United States by the only voice authorized to express its will has said so. Obviously it has not done so and therefore the judgment must be affirmed.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.